TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1933

No. 627

F. J. UTLEY AND D. T. UTLEY, APPELLANTS,

vs.

CITY OF ST. PETERSBURG, FLORIDA

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

FILED DECEMBER 7, 1933

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 17, 1934

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IN CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY

Chancery No. 10541

MATILDA J. UTLEY, joined by her husband, D. T. Utley, and D. T. Utley, Complainants,

vs.

CITY OF ST. PETERSBURG, a Municipal Corporation, Defendant

AMENDED AND SUPPLEMENTAL BILL FOR CANCELLATION OF VOID PAVING CERTIFICATES AS CLOUD ON TITLE AND FOR INJUNCTIVE RELIEF—Filed April 6, 1931

To the Honorable Judges of the Circuit Court of the Sixth Judicial Circuit of the State of Florida, in and for Pinellas County, in Chancery Sitting:

Come now your orators, Matilda J. Utley, joined by her husband, D. T. Utley, and D. T. Utley, citizens, residents and taxpayers of the city of St. Petersburg, Pinellas County, Florida, and of the United States of America, and, by leave of court first had and obtained, file this their Amended and Supplemental Bill against the City of St. Petersburg, a municipal corporation of Pinellas County, Florida, organized and existing under and by virtue of the laws of the State of Florida, and, thereupon, your orators complain and say:

[fol. 2] I

That they are the owners of the fee simple title, as an estate by the entireties, of the following described real estate situate, lying and being in the City of St. Petersburg, Pinellas County, Florida, more particularly described as follows, to-wit:

Lot Six (6), Block Eight (8) of Central Park Subdivision, according to the map or plat thereof on file and of record in the office of the Clerk of the Circuit Court of Pinellas County, Florida, in Plat Book 1, Page 39.

and that they have owned the fee simple title of the said real estate since the 24th day of February, 1925.

II

Your orators allege that title to the aforesaid real estate is vested in them, as an estate by the entireties, as hereinbefore alleged, and that said title emanated first from the Government of the United States of America and came down to your orators in an unbroken chain as follows:

[fol. 3] 13. Warranty Deed from Mrs. Carolyn Fogarty, widow, to your orators, Daniel T. Utley and Matilda J. Utley, or survivor, conveying Lot Six (6), Block Eight (8), Central Park Subdivision, according to map or plat thereof recorded in the office of the County Clerk at Clearwater, Florida, in Plat Book 1, Page 39, which deed bore date of February 24, 1925, and was recorded among the public records of Pinellas County, Florida, on the 16th day of March, 1925, in Deed Book 266, Page 392.

III

Your orators allege that the aforesaid lot is situate on the south side of First Avenue North, in the City of St. Petersburg, Florida, and fronts north on said avenue, and lies [fol. 4] between 47th and 48th Streets.

IV

Your orators further allege that at an adjourned regular session of the Board of Commissioners of the City of St. Petersburg, held at the City Hall, on the 20th day of April, 1925, a Resolution was passed that certain streets and alleys be graded, curbed with granite curb and paved, including First Avenue North from 46th Street to Disston, 50 feet wide, and the Director of Finance was instructed to advertise for bids in a daily newspaper published in the City of St. Petersburg and to call for separate bids for grading, curbing and paving, such bids to be handed in to the Director of Finance on or before the 18th day of May, 1925. And, it was further resolved that the Commissioners should have the right to assess against the property abutting on each side of the streets, or parts of streets, avenues or parts of avenues, or alleys so graded, curbed and paved, or otherwise improved, the whole or any part of the expense of such im-

provement in accordance with the benefits derived therefrom.

A true copy of the aforesaid Resolution is hereto attached, [fol. 5] marked for identification Complainants' Exhibit "A", and the same is prayed to be taken and read as a part of this Bill of Complaint, as fully to all intents and purposes as if incorporated herein in haec verbis.

V

Your orators further allege that, on the 21st day of May, 1925, the bid of the Georgia Engineering Company was accepted for paving First Avenue North from 46th Street to Disston; and, on the 21st day of May, 1925, the contract let to said Georgia Engineering Company.

A true copy of the Resolution accepting the bid of the Georgia Engineering Company is hereto attached, marked for identification Complainants' Exhibit "B", and the same is prayed to be taken and read as a part of this Bill of Complaint, as fully to all intents and purposes as if incorporated herein in haec verbis.

VI

Pursuant to the acceptance of the bid of the Georgia Engineering Company and of the letting of the contract aforesaid, the work of grading, curbing and paving First Avenue North from 46th to Disston was completed by the said Georgia Engineering Company as shown by report of the Director of Public Works, dated August 16, 1926, at a total cost of $40,937.46, and this amount spread over the prop- [fol. 6] erty, amounting to a cost of $18.6895 per property foot.

A true copy of the aforesaid report is hereto attached, marked for identification Complainants' Exhibit "C", and the same is prayed to be taken and read as a part of this Bill of Complaint as fully to all intents and purposes as if incorporated herein in haec verbis.

And, a Resolution was passed by the Board of Commissioners of the City of St. Petersburg, held at the City Hall, on the 16th day of August, 1926, accepting the work above mentioned in the report of the Director of Public Works, a true copy of which is hereto attached, marked for identification Complainants' Exhibit "D", and the same is

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prayed to be taken and read as a part of this Bill of Complaint as fully to all intents and purposes as if incorporated herein in haec verbis.

VII

At an adjourned regular session of the Board of Commissioners held at the City Hall on the 16th day of August, A. D. 1926, in the City of St. Petersburg, a Resolution was passed ordering publication of Notice to Property Owners that objections to said paving, etc., would be heard on the [fol. 7] 6th day of September, 1926, at the hour of 7:30 P. M.

At an adjourned regular session of the Board of Commissioners of the City of St. Petersburg, held at the City Hall on the 6th day of September, 1926, a Resolution was passed assessing the cost of the aforesaid paving and improvement against the abutting property and confirming and ratifying said assessments and providing that they should be a lien prior to all others, except liens for State and County taxes, and your orators allege that the amount so assessed against Lot Six (6), Block Eight (8) of Central Park Subdivision, owned by them, was $934.48.

A true copy of the aforesaid Resolution is hereto attached, marked for identification Complainants' Exhibit "E", and the same is prayed to be taken and read as a part of this Bill of Complaint as fully to all intents and purposes as if incorporated herein in haec verbis.

VIII

Your orators would further show unto the court that the City of St. Petersburg now claims a lien against the aforesaid real estate of your orators by reason of the aforesaid proceedings and recordation of the paving certificate here- [fol. 8] inafter set out, as follows, to wit: Certificate #11,935-C, dated September 6, 1926, payable to the City of St. Petersburg, Florida, against O. T. Utley, recorded among the public records of Pinellas County, Florida, in Lien Book 24, Page 363, in the amount of $934.48, the same being also recorded in Local Improvement Record #8, Page 3, of the public records in the City Hall of the City of St. Petersburg, Florida, the notice of lien last aforesaid being in the amount of $934.48, and showing the total cost of the improvement to be $30,206.17, signed by S. S. Martin, Di-

rector of Finance of the City of St. Petersburg, and further reciting that the same was recorded pursuant to provisions of Section 14, Chapter 9914, Laws of 1923.

IX

Your orators allege that, on the 8th day of December, 1924, the defendant municipality entered into a contract with the Florida National Bank of Jacksonville, Florida, and the First National Bank of St. Petersburg, Florida, for the sale of certain municipal improvement bonds to be issued in respect of certain contracts awarded during 1924 and 1925 and that the aforesaid contract awarded by the defendant municipality for paving First Avenue North between 46th Street and Disston Avenue was included in the total amount of contracts listed by the defendant municipality as having been awarded to the Georgia Engineering Company and recited in its Resolution of October 5th, 1925, and the issuance of $900,000.00 of Improvement Bonds was au-
[fol. 9] thorized in the last mentioned Resolution, covering contracts let to Georgia Engineering Company, as well as to other contractors, in which was included the contract for the completion of the paving herein involved, to the original of which contract remaining in the City Hall reference is here made, which Resolution recited that the said $900,000.00 Improvement Bonds were authorized to be issued under authority of, and in compliance with, the provisions of Chapter 9914, Laws of Florida, being the statute hereinbefore referred to.

And your orators allege that, by Resolution dated the 9th day of November, 1925, the form and recitals to be contained in the said series, 7, 8 and 9, were provided, and it was provided that said bonds be issued in denominations of $1,000.00 each, bearing interest at the rate of 6% per annum, payable semi annually, both principal and interest payable at the Seaboard National Bank in the City of New York, to be numbered and mature as therein provided, and that with the necessary variations as to numbers and maturities, said Bonds be issued in the following form, to-wit:

[fol. 10] X

Your orators further allege that, by Resolution dated January 18th, 1926, series 10, 11, 12 and 13, Improvement

Bonds, in the total amount of $1,300,000.00, were authorized to be issued and sold by the defendant municipality under the contract above mentioned with the Florida National Bank of Jacksonville and First National Bank of St. Petersburg, Florida, bearing date December 8th, 1924, on account of the paving and grading of certain streets and avenues on contracts awarded to the Georgia Engineering Company on the 21st day of May, 1925, which included the above mentioned contract for paving First Avenue North between 46th Street and Disston Avenue in front of the property of your orators, and which bond issue also comprised other properties and contracts in addition thereto, let to other contractors therein named in said Resolution.

A true copy of said Resolution passed by the defendant municipality on the 18th day of January, 1926, is hereto attached as Complainants' Exhibit "J" and made a part of this bill as fully as if incorporated herein haec verbis.

XI

Your orators further allege that, by Resolution dated February 15th, 1926, the form, contents, recitals, dates of maturity, etc., to be contained in the aforesaid series of bonds was fixed and that the said bonds purport on the face thereof to have been issued under and by virtue of the authority of Chapter 9914, Acts of the Legislature of [fol. 11] Florida, 1923, hereinbefore referred to; and further, that said bonds were, in fact, issued, containing the recitals authorized in said Resolution, and that the same were sold and delivered to the Florida National Bank of Jacksonville, Florida, and to the First National Bank of St. Petersburg, Florida, and the proceeds therefor collected by and paid to the defendant municipality.

XII

Your orators further allege that the said bonds, and each of them, as issued and sold and delivered as aforesaid, contained, among other recitals, the following:

"And the said City of St. Petersburg is hereby held and firmly bound and its full faith, credit and resources are hereby irrevocably pledged for the payment of the principal and interest hereof at maturity * * * and is issued in conformity with and under the provisions of Chap-

ter 9914, Laws of Florida of 1923, and pursuant to Resolutions of said City duly passed, approved and adopted as required by law; and it is certified that this Bond is authorized by and is issued in conformity with the requirements of the Constitution and Statutes of this State; and it is hereby certified and recited that all acts, conditions and things required by the Constitution and Laws of the State of Florida, and by the Charter of said City to exist, happen and be performed precedent to and in the issuance of this Bond, do exist, have happened and been performed in regular and due form, time and manner as required by law; and that the amount of this bond, together with all [fol. 12] other indebtedness of said City does not exceed any limitation imposed, either by the Constitution or the Statutes of Florida, or by the Charter of said City."

XIII

Your orators allege that the aforesaid bonds, before their sale and delivery, were executed by the Mayor and Director of Finance of the defendant municipality, and sealed with its corporate seal.

XIV

Your orators further allege that, of the series 7, 8 and 9 above mentioned, there is now past due, delinquent and unpaid a total of $85,000.00 principal, together with accrued interest; and that of the second series, 10, 11, 12 and 13, there is a total of said bonds delinquent, past due and unpaid of $70,000.00, together with accrued interest thereon.

XV

Your orators further allege that, by Resolution adopted by the Board of Commissioners of the defendant municipality on the 11th day of August, 1930, there was levied a tax of fourteen and one-half (14½) mills on each dollar [fol. 13] of assessed valuation of all property of every kind, liable or subject to taxation, and that of this amount 4.5847 mills was assessed or levied to pay interest on bonds, and that the above mentioned levy was made on all property in the District where the real estate of your orators is located, and included their property. And, your orators allege that their real estate hereinbefore described is assessed on the books of the defendant municipality at $1,100.00, for the

purpose of taxation; and that it is subject to and liable for the payment of said levy; and further, that, by Appropriation Ordinance #716-A, a total of $276,280.62 was appropriated to pay on assessment bonds delinquent, which included the bonds mentioned in paragraph XIV supra.

True copies of the aforesaid Resolution and of the Appropriation Ordinance are attached hereto, as Complainants' Exhibits "K" and "L," and also a duly exemplified copy of said Chapter 9914, Special Acts of the Legislature of Florida, 1923, is hereto attached as Complainants' Exhibit "X," and the same and each of them made a part of this bill as fully as if incorporated herein in haec verbis.

XVI

Your orators allege that the aforesaid Resolutions and assessments and notice of lien, and each of them, were done and passed pursuant to the provisions of Chapter 9914, Special Acts of the Legislature of Florida, 1923, concern- [fol. 14] ing special assessments for the cost of local improvements in the defendant City of St. Petersburg, and that the said law, and each and every part thereof, is invalid and unconstitutional and void and that the alleged and attempted assessment and lien upon the property of your orators based thereon are void, for the following reasons, to-wit:

1. The said law and the title thereof embrace more than one subject and includes matters not properly connected with the subject of said law in this: that it attempts to include the subject of local improvements for the City of St. Petersburg, and special assessments for the cost of same, and for the issuance and sale of bonds by the City of St. Petersburg, and, the said law treats also the subject of general taxation; and further the subject of suits at law and attorneys' fees for enforcing liens and the subject of the validity of assessments thereunder and judicial proceedings, and priority of liens and issuance of bonds.

2. Said law attempts to and does invade the powers of the Judiciary of the State of Florida in that it seeks to prohibit any question of validity or legality of any bonds or obligations issued thereunder on the part of the defendant municipality, or any taxpayer thereof in Sections 6 and 21 thereof.

3. Said law is unconstitutional and void in that, in Section 6 thereof, it attempts to confer power upon the governing authority of the City of St. Petersburg to investigate and determine the legality of proceedings before any bonds are issued thereunder and this invades the powers of the Judiciary.

The provisions of said statute are contradictory, vague and uncertain in this, that it provides or seeks to provide a method of collecting the assessments or liens therein [fol. 15] mentioned, while Sections 1 and 2 provide that if a special assessment be not imposed and collected in respect of the improvement, in season to pay the principal and interest, the municipality, by its governing authority and city officers, shall levy and collect on all taxable property in the municipality a tax sufficient to pay such principal and interest as the same respectively become due and payable.

5. That the provisions of said law, by its own terms, respecting the enforcement of collections, cannot be carried out, because it is made the duty of the governing authority of the municipality to levy and collect out of the general tax fund money sufficient to meet any defaulted bonds sold on account of improvements authorized in said statute; and after the bonds have been paid out of the general tax fund, the taxing authority is exhausted and no power remains to collect other assessments or taxes with respect to the same subject matter.

6. Said statute is unconstitutional and void in that it provides no notice or opportunity to property owners to be heard as to the advisability or necessity of any proposed improvement, previous to letting the contract for the completion of same, and no opportunity to inspect and see the plans and specifications for the same, nor the estimated cost thereof, and no opportunity to vote on the advisability of any bond issue or issues contemplated thereunder.

7. That thirty days only is allowed under the terms of said statute after the confirmation of any special assessment for any person aggrieved thereby to contest the legality thereof by suit, action, writ, or special proceedings, and prohibiting any suit, action, writ or special proceedings after such 30 days, which your orators allege is not a reasonable time for such purpose.

8. That no provision is made to notify the owners of [fol. 16] property proposed to be assessed for any public improvement in advance that such improvement is contemplated and that after such improvement has been completed and the city obligated to pay for the same, the Commissioners of the City of St. Petersburg, who have authorized such improvement, are not proper and impartial persons to sit as a Board of Arbitration or to adjust claims with regard to special assessments and the amount of supposed benefits derived therefrom by owners of property abutting on such improvement.

9. Section 18 of said chapter attempts to assess interest on overdue installments of assessments at the unlawful and usurious rate of 1% per month, amounting to 12% per annum, contrary to the usury statutes of the State of Florida.

10. Section 19 of said statute attempts to make provisions for reasonable attorneys' fees to be assessed in the event of collection of assessments by suit, and further provides that in no event shall the municipality be liable for the payment of the attorneys' fees therein provided for,

and your orators allege that such provision is unconstitutional and void, because it is an attempt to impose a penalty by way of attorneys' fees on the owners of property affected by liens under said statute and without their having consented thereto.

11. Section 25 of said statute is vague and uncertain in this: that it provides that said Act shall not repeal any other statute relating to the subject matter thereof, unless in conflict therewith,

and your orators allege that portions of all the laws relating to the government of the municipality of the City of St. Petersburg, and of its charter, are in conflict with [fol. 17] said Act; and, further, that the provisions of all the General Acts of the Legislature of the State of Florida, concerning the government of municipalities at large in the State of Florida, are in conflict with said Act, and that it leaves great doubt and uncertainty as to which particular sections of previous Acts of the Legislature and of the City Charter, as well as of the General Laws of the

State of Florida, have been repealed, if any, by the provisions of said Section 25 of the Special Acts of 1923, and that the said entire Act, being Chapter 9914, Special Acts of 1923, is unconstitutional and void for multiplicity of subject matter contained therein and for ambiguity and uncertainty throughout the entire statute, and each and every part thereof.

12. Sections 1 and 2 of said Act authorizes the defendant City of St. Petersburg to estimate and determine the cost of improvements to be raised by special assessment against property benefitted thereby, and further authorizes the city to issue improvement bonds, pledging the full faith and credit of the municipality in an amount not exceeding 70% of such estimate; and provides a method whereby bonds may be and have been issued on inflated estimates for an amount greater than the total cost of the work; and that all bonds issued under said section shall be excluded from limitation of indebtedness prescribed by the charter of the [fol. 18] municipality, by special act, or by general laws; and the two sections last referred to provide a method whereby the general credit of the city of St. Petersburg can be and has been pledged for bonds greatly in excess of the cost of improvements actually done and in excess of the total amount of assessments levied against property for the payment of such bonds, and in this manner increased the total indebtedness of the City of St. Petersburg beyond the limit authorized by law in a manner not contemplated by any law or charter of the City of St. Petersburg, and in a manner not contemplated by said Chapter 9914, Special Acts of 1923.

XVII

Your orators allege that the defendant municipality, acting under the provisions of said law, have deprived your orators of the right of possessing and protecting their property in that the assessment hereinbefore complained of was made arbitrarily, contract let and the work completed without any opportunity or notice to your orators to be heard as to the advisability or necessity of said improvement, or to be heard on the question of its cost, or whether the same has benefited or enhanced the value of the property of your orators; and, your orators allege that the entire cost of said improvement was assessed against the abutting prop-

erty, including the property of your orators, and that the said assessment was made arbitrarily without taking into consideration the benefits to the property as compared with the cost of such improvement; and, your orators allege [fol. 19] that bonds were issued and sold covering the cost of said improvement previous to its completion without any opportunity on the part of your orators, or any of the taxpayers of said municipality to vote upon such bond issue, or to be heard in any manner regarding the same, in contravention of the rights of our orators under the Constitution of the State of Florida, and particularly Sections 1 and 12 of the Bill of Rights thereof, and of Section 29, Article 16, of the Constitution of Florida, and of their rights as citizens of the United States, under the Fourteenth Amendment to the Federal Constitution.

XVIII

Your orators allege that said law is unconstitutional and void in that, in Section 12 thereof, it attempts to give power to the governing authority of the defendant municipality to assess the whole cost of any improvement, or such part as the governing authority may fix upon property specially benefitted by the improvement in proportion to the benefit thereby derived therefrom, and without providing any lawful or proper method of ascertaining the benefits and of giving opportunity to property owners affected to be heard. And Section 10 further provides, in the alternative, that if the governing authority shall find that all property abutting on such improvement is benefitted, it may direct the whole, or such part of the cost thereof, as it shall [fol. 20] fix, to be assessed against the property abutting on the improvement, according to the frontage thereof, which latter clause does not provide that the assessment be made in proportion to benefits received, but gives the governing authority power to arbitrarily assess the total cost, according to front footage of the property abutting on such improvement, without reference to benefits received; and your orators allege that the defendant municipality, operating under the latter provision, assessed their property as hereinbefore set out arbitrarily and without making any investigation whatsoever of benefits or enhancement of value of the property in relation to the cost of the improvement assessed; and your orators further allege that the property

in question is located about forty (40) blocks from the main business center of the City of St. Petersburg, in a sparsely settled section of town and that it is not necessary, or a proper or economical use of said property, to have a 50 foot pavement and that a 20 foot pavement would be adequate for the use of the property in question; and your orators allege that no account whatever was taken of the benefit accruing to the public at large; and your orators say that, under the terms of the aforesaid statute, they have been deprived, by the defendant municipality, of their [fol. 21] property without compensation, in derogation of their rights under the Constitution of the State of Florida and Sections 1 and 12 of the Declaration of Rights, and Section 29, Article 16, and in derogation of their rights as citizens of the United States under the Fourteenth (14th) Amendment to the Federal Constitution.

XIX

Your orators allege that the aforesaid statute, being Section 9914, Special Acts of the Legislature of Florida, 1923, is unconstitutional and void and that the acts of the defendant municipality thereunder, hereinbefore alleged and set out, are of no force or validity, because Section 24, Article 3 of the Constitution of the State of Florida provides that the Legislature shall establish a uniform system of county and municipal government which shall be applicable, except in cases where local or special laws are provided by the Legislature that may be inconsistent therewith. And your orators allege that the acts of the city aforesaid were not done pursuant to the provisions of any general law of the State of Florida for the government of municipalities at large in the state and that the local or special laws providing for the government of the municipality of the City [fol. 22] of St. Petersburg, relative to local improvements and the sale of bonds thereunder, which were in force at the time of the aforesaid improvement, are in conflict with and inconsistent with each other, and that the provisions of the charter of the City of St. Petersburg in force at the time, being Article 12, Section 112, thereof, and Chapter 8355, Special Acts of the Legislature of 1919, are each and both of them inconsistent with and in direct conflict with Chapter 9914, Special Acts of the Legislature of 1923, in

that the former law and charter, namely, the charter of the City of St. Petersburg in force at the time, and Chapter 8355, Special Acts of 1919, provide, among other things, that bonds issued for the payment of municipal improvements assessed against property benefitted thereby be sold in the manner prescribed by the General Laws, Special Acts or an Adopted Charter of the City of St. Petersburg for the sale of other city bonds, and that the same be validated in the manner provided by Chapter 6868, Laws of Florida of 1915, and amendments thereof; and that the sale of such bonds be advertised once a week for four weeks, and that their issuance be ratified by a majority of the qualified electors of the city who own real estate therein at an election held for such purpose; and, further, in making special assessments, that same be created by ordinance, whereas Chapter 9914, Special Acts of 1923, provides for the levying of assessments and creation of special assessment districts by resolution, without the necessity of publication [fol. 23] thereof, and without an opportunity on the part of property owners to be heard; and further authorizes the sale of bonds to pay for the cost of such improvements, without their approval by the vote of the qualified electors owning real estate in the city. And your orators say that the aforesaid special and local laws for the government of the defendant municipality are inconsistent and in conflict, each with the other, and that under the provisions of Section 25 of Chapter 9914, Special Acts of 1923, which provides that,

"This Act shall not repeal any other statute relating to the subject-matter thereof, unless in conflict therewith",

and further providing that:

"This Act shall be deemed to provide a supplemental, additional and alternative method of procedure for the benefit of said municipality,"

it is impossible to tell what the legislative intent was with regard to repeal of prior existing laws, and that Chapter 9914 aforesaid is therefore void and unconstitutional.

XX

Your orators allege that the defendant, City of St. Peters- [fol. 24] burg, claims a lien against their property by rea-

son of the attempted assessment in the amount set out in the aforesaid certificate of $934.48, and that notices have been sent out by the city that the aforesaid assessment is due in 10 annual installments and that two installments of the same, together with accrued interest, are past due and payable, in the amount of $93.45, with $74.87 accrued interest and recording fee of $1.35, making $169.67; and the second notice of $186.90 principal, and $155.72 accrued interest, and $1.35 recording fee, making a total of $343.97; and that said notices each contain a statement that the said lien might, at the option of the city, be considered due and payable and the lien foreclosed and the property sold, and, further, that if not paid within 15 days from date the same became due that an additional penalty at the rate of 1% per month would be charged on each installment.

Your orators allege that said alleged certificate or assessment is illegal and void and does not constitute a proper charge against the property of your orators and that the City of St. Petersburg, unless restrained and enjoined by this honorable court will proceed to collect the amount of [fol. 25] said certificate together with interest at the unlawful and usurious rate of 1% per month, and that in case of failure of your orators to pay said certificate the City of St. Petersburg will sell the property of your orators to pay the same; and your orators allege that because of the illegal and void certificates and assessment issued and recorded against their property, as hereinbefore alleged, that the same has been greatly damaged and rendered less merchantable and has prevented and will continue to prevent your orators from finding a purchaser for the said property, or from selling the same as advantageously as they otherwise might do, and that your orators are entitled to have an order restraining and enjoining the City of St. Petersburg from enforcing said certificate and from collecting the same, or attempting to do so, and that your orators are entitled to have an order from this court cancelling said certificate of record as a cloud upon their title, and that the same now remaining of record casts clouds, doubts and suspicions upon the title of your orators and results in depriving them of their property without compensation and without due process of law, contrary to their rights under the Constitution of the State of Florida and of the United States.

Your orators allege that said statute, Section 9914, Special Acts of Legislature of Florida of 1923, is unconstitutional and void in this, that nowhere in said statute, nor [fol. 26] any of the separate provisions and paragraphs thereof, is it required that any finding of public convenience or public necessity be made by the governing authority of the defendant municipality before proceeding to exercise the powers conferred, or attempted to be conferred, upon it by the terms of said statute, and nowhere is there a requirement that a resolution of public necessity or public convenience be passed by the governing authority of the city as a prerequisite to the exercise of the taxing power therein attempted to be conferred upon the governing authority of the municipality and as a prerequisite to the issuance and sale of bonds under said statute; and your orators allege that no determination was made by the governing authority of the defendant municipality, nor resolution of public necessity or public convenience was passed, nor any showing of any kind made that, in fact, the public necessity or the public convenience or welfare demanded that the paving hereinbefore complained of be done adjacent to the property of your orators. But, your orators allege that the governing authority of the defendant municipality proceeded arbitrarily, without determining or finding, or even pretending to do so, that public necessity or public convenience required the improvement or paving complained [fol. 27] of, and that the same was done by the city and an assessment for the cost of the same attempted to be laid against the property of your orators, under the authority of the aforesaid statute, and that your orators have been deprived of their fundamental and constitutional rights under the Constitution of the State of Florida, as well as of the United States of America, by the action of the defendant municipality hereinbefore complained of and which action purports in the proceedings and minutes thereof to have been taken pursuant to the provisions of said statute. And your orators allege that, in fact, no public necessity and no public convenience, and no public welfare was served and that no showing could have been made to that end, and that the defendant municipality, proceeding under the express terms and provisions of the aforesaid statute, has thereby invaded the constitutional rights of your orators and if the said statute is held by this court to be

valid and constitutional that your orators will have no remedy or redress and that the action of the said city so taken, as hereinbefore particularly and at length set out, under the provisions of the aforesaid statute, will result to the extent of the attempted lien or assessment against the property of your orators, to a taking of their property without due process of law and without compensation therefor, in violation of their constitutional rights as citizens and residents of the State of Florida and of the United States of America. [fol. 28]

XXI

Your orators allege that they are in the actual possession of the aforesaid real estate and that they have been in such possession from the date of the deed transferring the fee simple title to them from their grantor, Mrs. Carolyn Fogarty, as hereinbefore set out.

Your orators further allege that, under the General Laws of Florida, relative to assessments by municipalities in the State of Florida, abutting property may be assessed with only one-third of the expense, pursuant to provisions of Section 1858, Revised General Statutes of 1920, amended by Chapter 9175, Laws of 1923, being Section 2968 Compiled General Laws of Florida of 1927. And your orators allege that the attempted assessment of the entire cost of the paving, as hereinbefore set out, against the property of your orators abutting on the same, is contrary to the provisions of said law.

XXII

Your orators allege that they have been deprived of their constitutional rights in this: that the defendant municipality, acting or purporting to act under the provisions of said chapter 9914, authorized, issued and sold local Improvement Bonds in the total amount of $2,200,000.00, as hereinbefore alleged, without your orators being afforded any opportunity to vote on said bond issue; and, further, that said bonds were issued pursuant to an illegal and void contract of the defendant municipality with the Florida National Bank of Jacksonville, and with the First National Bank of St. Petersburg, Florida; and that the said [fol. 29]

bonds were not advertised and sold to the highest bidder at the time of the issuance thereof, as required by law, and in that the defendant municipality had now levied a general tax on all taxable property in the defendant municipality, including that of your orators, to meet the amortization interest and carrying charges of the bonds so issued, which are now delinquent, past due and unpaid as hereinbefore alleged, and that said defendant municipality, as hereinbefore alleged, has appropriated money raised and to be raised from general taxation for such purposes, and in that the bonds so issued, sold and delivered, and each of them, contain recitals purporting to be inserted therein, and reciting that they were inserted therein under authority of said Chapter 9914, one of the recitals being as follows, to-wit:

"It is certified that this Bond is issued by and is issued in conformity with the requirements of the Constitution and Statutes of this State."

And your orators allege that said bonds contain other re- [fol. 30] citals, as hereinbefore set out. And your orators say that, as between them and the defendant municipality, the said bonds, and each of them, are totally void, and that the defendant municipality had no power to issue said bonds, nor to levy the general tax assessment against their property hereinbefore alleged and complained of.

Forasmuch, therefore, as your orators are without remedy in the premises, save and except only in a court of equity, and to the end that the said City of St. Petersburg, a municipal corporation, organized and existing under and by virtue of the laws of the State of Florida, which is made a party defendant hereto, may, if it can, show why your orators should not have the relief herein and hereby prayed, and may, to the best of its knowledge, remembrance, information and belief, full, true, direct and perfect answer make to each and every of the matters and things herein alleged and set out as if thereunto specifically interrogated (but not under oath, answer under oath being hereby expressly waived).

Your orators therefore pray:

1. That the defendant, City of St. Petersburg, a municipal corporation under the laws of the State of Florida, be enjoined and restrained from bringing any action, either at

law or in equity, against your orators, and/or the property of your orators, to enforce the collection and payment of [fol. 31] the paving certificate, assessment or lien, hereinbefore in the charging part of this Bill of Complaint set out and described, and that such injunction be made temporary until final hearing and permanent thereafter.

2. That the paving certificate, assessment and lien thereof, hereinbefore mentioned and described, be adjudged and decreed by the court to be totally null and void and cancelled as a cloud upon the title of your orators to the real estate hereinbefore described; and that the same be declared not to be a lien upon the property of your orators; and that the clerk of this court be instructed to cancel the same upon the margin of the book of record thereof in the office of the Clerk of the Circuit Court of Pinellas County; and that the Director of Finance be ordered and instructed to cancel the same on the margin of the book of record thereof in the City Hall.

3. That the court consider and determine the validity and constitutionality of Chapter 9914, Special Acts of the Legislature of Florida of 1923, hereinbefore mentioned, and by the decree of this court determine and hold that the same is unconstitutional and void insofar as the same, or any separate part thereof, affects the rights of your orators touching the assessment of the paving lien hereinbefore complained of.

4. That the court consider and determine the validity and constitutionality of Chapter 9914, Special Acts of the Legislature of Florida of 1923, hereinbefore mentioned, and by its decree determine and hold that the same is unconstitu- [fol. 32] tional and void insofar as the same, or any separate part thereof, affects the rights of your orators touching the issuance, sale and delivery of the local Improvement Bonds hereinbefore complained of, and of the levy of general taxes on the property of your orators to pay certain of said bonds, delinquent, and that said Chapter 9914, Special Acts of the Legislature of 1923, be held unconstitutional and void insofar as the same affects the rights of your orators as against and between them and the defendant municipality.

5. And that your orators may have such other, further and general relief in the premises as in equity and good conscience *shall* seem meet and proper and as the circumstances of the case may require.

And may it please your Honors to grant unto your orators the State's most gracious writ of subpœna, to be directed to the defendant corporation, City of St. Petersburg, thereby commanding it on a day certain, and under penalty therein to be specified, to be and appear before this honorable court and then and there full, true, direct and perfect answer make to all and singular the allegations in this bill of complaint contained (but not under oath, its answer under oath having been expressly waived), and to stand to and abide by such other and further orders and decrees as to this honorable court shall seem meet and proper.

[fol. 33] And your orators will ever pray.

D. T. Utley and Matilda J. Utley, Joined by D. T. Utley, her husband. L. D. Martin, Solicitor for Complainants.

Duly sworn to by D. T. Utley and Matilda J. Utley. Jurat omitted in printing.

[fol. 34] Receipt is hereby acknowledged, and service accepted, of a true and correct copy of the foregoing Amended and Supplemental Bill, this 6th day of April, A. D. 1931.

Raney H. Martin, Solicitor for Defendant, City of St. Petersburg.

[fol. 35] EXHIBIT "A" TO COMPLAINT

Resolution

Whereas, under and by virtue of the Charter of the City of St. Petersburg, Florida, the City Commissioners of said City of St. Petersburg have the power to grade, pave, repave, curb, gutter, wall, bridge, gravel, macadamize, plank and repair any street or avenue, alley or highway within the limits of said City and when at any time the said Commissioners shall decide to grade, pave, repave, curb, gutter, wall, bridge, gravel, macadamize, plank or repair

any street or avenue, alley or highway within the limits of said City, said Commissioners shall pass a Resolution providing that the same shall be done and shall thereupon cause the director of finance to advertise for bids for making such improvement. Said advertisement shall contain, among other things, the description of the material to be used and the width of the street, if paving is to be done, and shall designate with reasonable certainty the limits within which said work is to be done and the nature thereof and in said advertisement said Commissioners may reserve the right to reject any and all bids, and in advertising for street paving, commissioners may, within their discretion, advertise for separate bids for grading, curbing and paving and enter into separate contract therefor; and

Whereas, the Director of Public Works has presented petitions for paving and recommended acceptance of the same,

Now, therefore, be it resolved by the Board of Commis- [Vol. 30] sioners of the City of St. Petersburg, Florida, that the following streets, avenues and alleys be graded, curbed with granite curb and paved, etc.:

Job No.	Street or avenue	From	To	
*	*	*	*	*
#402	First Avenue North	46th	Disston	50 ft. wide
*	*	*	*	*

And be it further resolved that the Director of Finance of the City of St. Petersburg be and he is hereby directed to advertise in a daily newspaper published in the City of St. Petersburg calling for bids for making the improvement therein provided for said advertisement, to contain, among other things, a description of the material to be used, the width of the street to be graded and paved, and shall designate with reasonable certainty the limits within which said work shall be done and the nature thereof. Said advertisement shall reserve the right of the City Commissioners to reject any or all bids.

And be it further resolved that the Director of Finance in making said advertisement may call for separate bids for grading, curbing and paving and reserve the right to

enter into separate contracts for each of the said classes of work, to wit, grading, curbing and paving.

And be it further resolved that said advertisements shall require all bids to be handed in to the Director of Finance [fol. 37] on or before the 18th day of May, A. D. 1925, at which time said City Commissioners shall meet to open and consider said bids.

And be it further resolved that said advertisement shall notify all bidders that a certified check for not less than Dollars shall accompany each bid.

And be it further resolved that the Commissioners of the City of St. Petersburg shall have the right to assess against the property abutting on each side of the streets or parts of streets, avenues or parts of avenues, or alleys so graded, curbed and paved or otherwise improved, the whole or any part of the expense of such improvement, in accordance with the benefits derived therefrom.

Passed by the Board of Commissioners in adjourned regular session the 20th day of April, A. D. 1925.

R. S. Pearce, Mayor Commissioner, Chairman, Board of Commissioners.

Attest: S. S. Martin, Director of Finance.

Approved by me the 20 day of Apr., A. D. 1925.

[fol. 38] EXHIBIT "E" TO COMPLAINT

Resolution

"Whereas, this Board did, at a meeting held on the 16th day of August, A. D. 1926, cause notice to be given in the "St. Petersburg Times" on the 26th and 27th days of August, A. D. 1926, that street improvements and street paving with brick and granite curb had been completed in the following described territory, to-wit:

First Avenue North between 46 and 49th Streets North, fifty (50) feet wide.

and that the City Commission proposed to assess on the 6th day of September, A. D. 1926, against each lot as contained in said notice the amount set opposite such lot, and

Whereas, this is the time and place mentioned in said notice for receiving complaints or objections to said paving, its acceptance or the assessments therefor, and

Whereas, no objection or complaint against any of said paving, the acceptance or the assessment for the cost therefor, has been filed with this Board,

Now therefore be it resolved by the Board of City Commissioners of the City of St. Petersburg, that the respective amounts for each piece of property, as tabulated hereinbelow, is the proportionate amount as fixed by this Board and assessable against said property on account of street paving and improvements thereto; and

Be it further resolved that there is hereby assessed against said property the said amounts set opposite thereto and [fol. 39] as hereinbelow tabulated, and that said assessments are hereby confirmed and ratified and shall from this day constitute a lien prior to all other liens, except liens for State and County taxes:

Central Park Sub.

Lot 9	Block 4	$934.48
Lot 10	Block 4	934.48
Lot 11	Block 4	841.03
Lot 12	Block 4	841.03
Lot 13	Block 4	841.03
Lot 14	Block 4	841.03
Lot 15	Block 4	779.35
Lot 16	Block 4	934.48
Lot 9	Block 5	934.48
Lot 10	Block 5	934.48
Lot 11	Block 5	934.48
Lot 12	Block 5	934.48
Lot 13	Block 5	934.48
Lot 14	Block 5	934.48
Lot 15	Block 5	934.48
Lot 16	Block 5	1,158.75
Lot 7	Block 6	934.48

[fol. 40]

Lot 8	Block 6	934.48
Lot 9	Block 6	934.48
Lot 10	Block 6	934.48
Lot 11	Block 6	1,149.40

Lot 12	Block 6	1,149.40
Lot 1	Block 7	934.48
Lot 2	Block 7	934.48
Lot 3	Block 7	934.48
Lot 4	Block 7	934.48
Lot 5	Block 7	1,158.75
Lot 6	Block 7	934.48
Lot 1	Block 8	934.48
Lot 2	Block 8	934.48
Lot 3	Block 8	934.48
Lot 4	Block 8	934.48
Lot 5	Block 8	934.48
Lot 6	Block 8	934.48
Lot 7	Block 8	934.48
Lot 8	Block 8	934.48
Lot 1	Block 8	779.35
Lot 2	Block 9	841.03
Lot 3	Block 9	841.03
Lot 4	Block 9	841.03
Lot 5	Block 9	841.03

[fol. 41]

Lot 6	Block 9	841.03
Lot 7	Block 9	934.48
Lot 8	Block 9	934.48

Be it further resolved that unless said amounts are paid on or before the 6th day of October, A. D. 1926, there shall be filed and recorded in the proper records of the City Hall a lien for the amount assessed against each lot, and, in addition thereto, the expense of filing and recording the same, and the amount of each assessment and the expenses for filing said lien therefor shall continue as a lien against said property and shall be payable in ten (10) equal installments from date, with interest thereon at the rate of 8% per annum: provided, however, that said assessments are made and properly executed, collected and enforced in accordance with the provisions of Chapter 9914 of the Laws of Florida.

Passed by the Board of Commissioners in regular session the 6th day of September, A. D. 1926.

R. S. Pearce, Mayor-Commissioner, Chairman Board of Commissioners.

Attest: S. S. Martin, by Evelyn Holcomb, Director of Finance.

[fol. 42] EXHIBIT "H" TO COMPLAINT

Min. Bk. 19, P. 557. Res. Bk., 11/9/25, P. 282

Resolution

Whereas this Board has, by resolution passed at a regular adjourned meeting held on the 5th day of October, A. D. 1925, provided for the issuance of $900,000.00 Improvement Bonds, to be issued in three (3) series, and to be dated and to mature as follows, to-wit:

Series 7 for $200,000.00, to be dated December 1, 1925, and $20,000.00 of said bonds to mature on the 1st day of December in each of the years 1926 to 1935, inclusive.

Series 8, for $300,000.00, dated January 1, 1926, and $30,000.00 of said bonds to mature on the 1st day of January in each of the years 1927 to 1936 inclusive.

Series 9, for $400,000.00, dated February 1, 1926, and $40,000.00 of said bonds to mature on the 1st day of February, in each of the years 1927 to 1936 inclusive;

and

Whereas it is proposed to issue said bonds under Chapter 9914, Florida Laws of 1923; and

Whereas Section 6 of said Chapter 9914 provides that before any bonds are issued thereunder the governing authority shall investigate and determine the legality of the proceedings; and

Whereas this Board, in order to investigate and determine the legality of the proposed $900,000.00 bonds to be issued in three (3) series, and to be dated and mature as more explicitly set out above, and as otherwise provided for and described in a resolution of this Board passed on the 5th day of October, A. D. 1925, has caused validating proceedings to be instituted in respect of said issue of bonds, as provided in Sections 3296 to 3302, inclusive, of the Revised Statutes of the State of Florida; and

. . . . . .

[fol. 43] EXHIBIT "J" TO COMPLAINT

Min. Bk. 20, P. 55. Res. Bk., 1/18/25, P. 11

Resolution

Whereas, after due and proper advertisement, the City Commission of the City of St. Petersburg did, at a meeting

held on the 21st day of May, 1925, award contracts for the grading, paving and repaving of certain streets, avenues and alleys of said city, to the following contractors and in the estimated sum of, respectively, to wit:

Georgia Engineering Company	$1,358,558.68
W. J. Overman	425,000.00
W. H. Noel	800,000.00
E. R. Tibbetts	576,000.00

making a total of all of said contracts for street paving, the estimated sum of $3,159,558.68, and

Whereas, the city did on the 8th day of December, 1924, enter into contract with the Florida National Bank of Jacksonville and the First National Bank of St. Petersburg, for the sale of certain municipal improvements bonds to be issued in respect of certain contracts awarded during 1924 and 1925; and

Whereas the contracts mentioned above for street paving are a part of the contracts in respect of which the city has contracted to issue and sell its improvement bonds to the Florida National Bank of Jacksonville and the First [fol. 44] National Bank of St. Petersburg as aforesaid; and

Whereas, part of said work has been completed and accepted and assessments made against the same; and

Whereas, the remainder of said work covered by said contract is now under course of construction;

Now, therefore, be it resolved by the Board of City Commissioners of the City of St. Petersburg:

That the City Commission now deems it advisable and necessary to the best interests of said city, and does hereby propose and determine that all of said improvements to be made in respect of said contracts with the Georgia Engineering Company, W. H. Overman, W. H. Noel and E. R. Tibbetts be made wholly at the cost of the property owners benefited thereby and against the property abutting on each side of said streets, avenues and alleys.

Be it further resolved by the Board of City Commissioners of the City of St. Petersburg: That the total cost of said improvements to said streets, avenues and alleys is hereby estimated and determined to be the sum of Three Million, One Hundred Fifty-nine Thousand Five Hundred [fol. 45] Fifty-eight Dollars and Sixty-eight Cents ($3,-

159,558.68), and that said improvements to said streets, avennes and alleyes be made wholly at the cost of the property owners benfited thereby, and that the payment for said improvements be provided for by levying, assessing and collecting special assessments against the properfy abutting on each side of said streets, avennes and alleys, and that the total cost therefor be levied, assessed and collected by special assessments against said property abutting on each side of said streets, avennes and alleys.

Be it further resolved by the Board of City Commissioners of the City of St. Petersburg:

That, for the purpose of providing funds for the prompt payment of said contracts, Improvement Bonds of the City of St. Petersburg, in the sum of One Million Three Hundred Thousand Dollars ($1,300,000.00), be hereby authorized and issued, said bonds to be issued under authority of and in strict compliance with the provisions of Chapter 9914, Laws of Florida, and as a part of the seventy per cent (70%) of said estimates that may be issued in bonds.

That the said bonds be issued in four (4) series and be dated and mature as follows, to wit:

Series #10, $300,000.00, dated April 1, 1926, and $30,000.00 of said bonds to mature on the 1st day of April in each of the years 1927 to 1936, inclusive.

Series #11, $300,000.00, dated May 1st, 1926, and $30,000.00 of said bonds to mature on the 1st day of May in [fol. 46] each of the years 1927 to 1936, inclusive.

Series #12, $300,000.00 dated June 1, 1926, and $30,000.00 of said bonds to mature on the 1st day of June in each of the years 1927 to 1936, inclusive.

Series #13, $400,000.00 dated July 1, 1926, and $40,000.00 of said bonds to mature on the 1st day of July in each of the years 1927 to 1936, inclusive.

That said bonds shall be in denominations of $1,000.00 each with interest at the rate of six (6) per cent. per annum, payable semi annually; both principal and interest payable at the Seaboard National Bank, in the city and state of New York; and that the exact form of said bonds be determined by a subsequent resolution of this Board, under authority of and in strict compliance with said Chapter 9914, Laws of Florida.

Be it further resolved that, for the purpose of judicially and conclusively determining the legality of said bonds and the authority of said city to incur said bonded indebtedness, the City Attorney is hereby authorized, directed, empowered and instructed to institute in the Circuit Court of the Sixth Judicial Circuit the proper validating proceedings in respect of said $300,000.00 bonds, as set out above.

Be it further resolved that said bonds, when ready for [fol. 47] delivery, shall be delivered to the purchasers thereof, the Florida National Bank of Jacksonville, and the First National Bank of St. Petersburg, but only in such amounts as may be necessary, from time to time, to enable said city to meet the payments on said contracts.

Passed by the Board of City Commissioners of the City of St. Petersburg, this 18th day of January, A. D. 1926.

C. M. Blanc, Chairman Board of Commissioners, Mayor Commissioner. (Seal.)

Attest: S. S. Martin, Director of Finance.

[fol. 48] Exhibit "K" to Complaint

Resolution

Whereas, the Tax Commission having completed the 1930 Tax Roll, and the tentative figures of same having been filed with the Board of Commissioners at their meeting held August 8, 1930, and said Board of Commissioners having accepted the same, and

Whereas, it is necessary to raise from taxation the sum of One Million Eight Hundred Eighty-seven Thousand Two Hundred Ninety six and 12 100 ($1,887,296.12) Dollars to carry on the government of the City of St. Petersburg, Florida, for the year ending June 30, 1931.

Now, therefore, be it resolved by the Board of Commissioners of the City of St. Petersburg, Florida:

Section 1. That the millage tax levied for the year 1930 be and the same is hereby fixed at Fourteen and one-half (14½) mills on the dollar on the assessed value of property of every kind liable for or subject to taxation by the City of St. Petersburg, Florida, within the old corporate limits of said city, being the same corporate limits as assessed for the year 1920.

Section 2. That the millage shall be and is hereby levied for the following purposes:

	Mills
General Purposes	5.3905
Interest on Bonds	4.5347
Sinking Fund	1.6593
Police Pension Fund	.1000
Firemen's Pension Fund	.1000
Hospital	.2278
Advertising and Library	1.8496
Park Board	.6381
	14.5000

[fol. 49] Section 3. That the millage tax levied for the year 1930 be and the same is hereby fixed at Thirteen and Five Thousand Five Hundred Thirty-six / Ten Thousandths (13.5536) Mills on the dollar on the assessed value of property of every kind liable for or subject to taxation by the City of St. Petersburg, Florida, within the north and south additions to the said city, having been annexed to the said city on December 15, 1920.

Section 4. That the millage shall be and is hereby levied for the following purposes:

General Purposes	5.3905
Interest on Bonds	3.8422
Sinking Fund	1.4054
Police Pension Fund	.1000
Firemen's Pension Fund	.1000
Hospital	.2278
Advertising and Library	1.8496
Park Board	.6381
	13.5536

Section 5. That the millage tax levied for the year 1930 be and the same is hereby fixed at Twelve and Three Thousand Five Hundred Seventy-one / Ten Thousandths (12.3571) Mills on the dollar on the assessed value of property of every kind liable for or subject to taxation by the City of Petersburg, Florida, within the addition to the [fol. 50] said City, having been annexed on April 28, 1925.

Section 6. That the millage shall be and is hereby levied for the following purposes:

General Purposes	5.3905
Interest on Bonds	2.9774
Sinking Fund	1.0737
Police Pension Fund	.1000
Firemen's Pension Fund	.2278
Advertising and Library	1.8496
Park Board	.6381
	12.3571

Section 7. That the millage tax levied for the year 1930 be and the same is hereby fixed at Ten and Six Thousand Eight Hundred Sixty four Ten Thousands (10.6864) Mills on the dollar on the assessed value of property of every kind liable for or subject to taxation by the City of St. Petersburg, Florida, within the addition to the said city, having been annexed on July 19, 1926.

Section 8. That the millage shall be and is hereby levied for the following purposes:

General Purposes	5.2905
Interest on Bonds	1.7825
Sinking Fund	.5979
Police Pension Fund	.1000
Firemen's Pension Fund	.1000
Hospital	.2278
Advertising and Library	1.8496
Park Board	.6381
	10.6864

Adopted by the Board of Commissioners in regular ses-
[fol. 51] sion the 11th day of August, A. D. 1930.

(Signed) J. P. Pearce, Mayor-Commissioner, Chairman Board of Commissioners. (Seal.)

Attest: (Signed) W. A. McLeod, Director of Finance.

NR

[fol. 52] EXHIBIT "L" TO COMPLAINT

Appropriation Ordinance

No. 716-A

An Ordinance to make Appropriations to the Finance Department (including City Planning Board, Mayor's Office and Division of Law), the Public Works Department, the Street Lighting Department, the Division of Health, the Division of Police, the Division of Fire, the Board of Public Parks, the Library and City Advertising Board, the City Hospital Board, Extraordinary Expense, to Pay Interest on General Bonds, to Create a Sinking Fund for the Retirement of General Bonds, Police Pension Board, Fireman's Pension Board, Notes and Contracts Payable Fund, the Aviation Board; the Food Handlers Division, the Municipal Water Plant, the Municipal Gas Plant, the Municipal Railways and Power Plant, the Public Utilities Sinking Fund and the Interest on Public Utility Bonds.

The City of St. Petersburg does ordain:

Section 1. That the sum of Two Million, Seven Hundred Twenty-three Thousand, Six Hundred Ninety-nine and 93/100 ($2,723,699.93) Dollars out of the tax levy of the year 1930, delinquent taxes of prior years, the anticipated revenue and the cash on hand June 30, 1930, be and the same is hereby appropriated to the hereinafter named departments, auxiliary boards and other purposes.

. . . . . .

Section 11. To pay interest on general bond obligations, the sum of Eight Hundred Sixty-eight Thousand, Five Hundred Ninety-seven and 37/100 ($868,597.37) Dollars, for the following purposes:

[fol. 53]

Interest on General Bonds	$496,780.50
Interest Payable to 6 30 30	86,536.25
Guaranty Fund #2, Due to 6 30/30	3,000.00
Guaranty Fund #2 Add'l, to 6 30 31	6,000.00
Balances of 50% Assessment Bonds Interest Requirements 1930-31	276,280.62
	$868,597.37

Receipts

Cash on Hand	$146,061.73
Guaranty Fund #1 Due to 6 30 30	3,000.00
Guaranty Fund #2 Due to 6 30 30	6,000.00
Guaranty Fund #2 Due to 6 30/31	6,000.00
Taxes	557,535.64
1929 Delinquent Tax Collections subsequent to Nov. 1st, 1930	150,000.00
	$868,597.37

* * * * * * *

Passed on its first reading the 25th day of July, A. D. 1930.

Passed on its second reading the 2nd day of August, A. D. 1930.

Recalled and passed on its second reading as amended the 8th day of August, A. D. 1930.

Passed on its third reading the 11th day of August, A. D. 1930.

Approved:

(Signed) J. D. Pearce, Mayor-Commissioner, Chairman, Board of Commissioners. (Seal.)

Attest: (Signed) W. A. McLeod, Director of Finance.

[fol. 54] EXHIBIT "X" TO COMPLAINT

Chapter 9914, No. 796

An Act Providing a Supplemental, Additional and Alternative Method of Making Local Improvements for the City of St. Petersburg, a Municipal Corporation, Authorizing and Providing for Special Assessments for the Cost thereof, and Authorizing the Issuance and Sale of Bonds for such Municipality.

Be it enacted by the Legislature of the State of Florida:

Section 1. Whenever the City of St. Petersburg, a municipal corporation existing under the laws of this State, hereinafter referred to as the "Municipality", shall have (either heretofore or hereafter), by its commission or other governing authority, hereinafter referred to as the "Governing Authority", awarded contracts for local improvements, as specifically provided in Section 24 of this Act,

and to be made wholly or in part at the cost of the property owners benefited thereby, and the payment for which improvements it proposes to provide by levying and assessing and collecting special assessments for any and all of the improvements authorized under Section 24 of this Act, the said City of St. Petersburg is hereby authorized to estimate and determine the cost of the improvements to be raised by special assessments against the property benefited, and may by resolution issue Improvement Bonds pledging the full faith and credit of the Municipality to an amount not exceeding 70 per cent of such estimate. Said bonds may be sold but shall not be delivered except as the work progresses. Such bonds shall be general obligations of the Municipality, and if special assessments be not im- [fol. 55] posed and collected in respect of the improvement in season to pay the principal and interest, the Municipality by its Governing Authority and other officers shall levy and collect on all the taxable property in the Municipality a tax sufficient to pay such principal and interest as the same respectively become due and payable.

Section 2. Upon the final completion of any contract for a public improvement, and after an assessment of benefits has been confirmed by the Governing Authority, as hereinafter provided, the Governing Authority of the Municipality may by resolution issue Improvement Bonds pledging the full faith and credit of the Municipality to an amount not exceeding the unpaid assessments, as so confirmed; provided, however, that if any bonds have been issued under the preceding section upon an estimate of the cost of the improvement, the bonds issued under the preceding section and the bonds issued under this section shall not in the aggregate exceed the amount of the unpaid assessments, as so confirmed. All special assessments levied and imposed in respect of the improvement shall constitute a fund for the payment of the bonds authorized, by this and the preceding section, and in the event that there be any failure to collect and receive the said special assessments in season to pay the principal and interest of the said bonds, the municipality by its Governing Authority [fol. 56] and other officers shall levy and collect on all of its taxable property in the Municipality a tax sufficient to pay such principal and interest as the same respectively

become due and payable. All bonds issued under this and the preceding section shall be excluded from any limitation of indebtedness prescribed by the Charter of the Municipality, by Special Act or by the General laws.

Section 3. All bonds issued under the two sections immediately preceding shall mature and become payable in not more than ten annual instalments, which shall be substantially equal in amount, and the last of which shall be payable in not more than ten and one half years from the date.

Section 4. All bonds issued under this Act shall be in the denomination of One Hundred Dollars or some multiple thereof, and shall bear interest not exceeding six per centum per annum, payable annually or semi annually, and both principal and interest shall be payable at such place or places as the Governing Authority may determine. The form of such bonds shall be fixed by resolution of the Governing Authority of the Municipality, and said bonds shall be signed by the Mayor or Chief Executive officer of the Municipality and the Director of Finance thereof, under the seal of the Municipality. The coupons shall be executed by the fac simile signature of the Director of Finance. The delivery of any bond and coupon so executed at any time thereafter shall be valid, although before the date of delivery the persons signing such bonds or coupons shall cease to hold office.

Section 5. Bonds issued hereunder shall have all the qualities of negotiable paper under the law merchant, and shall not be invalid for any irregularity or defect in the proceedings for the issue and sale thereof, and shall be incontestable in the hands of bona fide purchasers or holders thereof for value.

Section 6. Before any bonds of any municipality are issued hereunder, the Governing Authority shall investigate and determine the legality of the proceedings. The resolution authorizing the bonds may direct that they shall contain the following recital: "It is certified that this bond is authorized by, and is issued in conformity with the requirements of the Constitution and statutes of this State." Such recital shall be an authorized declaration by the Governing Authority of the Municipality and shall import that there is constitutional and statutory authority for

incurring the debts and issuing the bonds; that all the proceedings therefor are regular; that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the bond have existed, happened and been performed in due time, form and manner as required by law; that the amount of the bond, together with all other indebtedness, does not exceed any limit or limits prescribed by the constitution and statutes of this State. If any bond be issued containing such recital, it shall be conclusively presumed that said recital construed according to the import hereby declared is true, and neither the Municipality nor any taxpayer thereof [fol. 58] shall be permitted to question the validity or legality of the obligations in any court, in any action or proceeding.

Section 7. All bonds issued hereunder shall be sold for not less than par and accrued interest to date of delivery and in such a manner as the Governing Authority shall determine, or as may be provided in any section of the City Charter relative to the sale of bonds; provided, however, that nothing contained herein, or any section of the City Charter, or any other Act, shall be construed to mean that any bonds herein provided for must be ratified or submitted to the vote of the electors of the said City; provided, further, that if the Municipality shall determine to issue bonds in accordance with the provisions of this Act in respect to paving contracts awarded during the calendar year, 1923, and the bonds for which paving contracts the Municipality has already contracted to sell, and has entered into a contract for the sale and delivery of the same, the Municipality is hereby authorized to proceed with the completion of said contract for the issuance and sale of bonds as provided in said contract, and said bonds may be issued under the provisions of this Act without respect to the provisions of any other act or section of the City Charter relative to the manner and sale of bonds.

Section 8. This Act shall, without reference to any other act of the Legislature of Florida, be full authority for the issuance and sale of the bonds in this Act authorized, and, shall be construed as an additional and alternate method [fol. 59] for the financing of the improvements herein referred to. No ordinance, resolution or proceeding in re-

spect of the issuance of said bonds hereunder shall be necessary, except such as is required by this Act. No publication of any resolution, ordinance or proceeding relating to the issuance of the said bonds shall be required, except such as is required by this Act.

Section 9. Upon the completion of any improvement, or upon the completion of any part, section or parcel thereof, the Governing Authority of the Municipality shall cause to be prepared a roll or list to be called the "Assessment List", showing the names of the property owners in the part completed, whether the entire improvement, or part, section or parcel thereof, and opposite each name a description of each lot or parcel of land proposed to be assessed for such improvement and the amount proposed to be assessed against each lot or parcel of land. Such lists as from time to time made shall be entered in a book to be prepared for that purpose, which shall contain an appropriate column in which payments may be credited. Said book shall be known as the "Assessment Book for Local Improvements". It shall be a public record and the entry therein of any assessments shall be and constitute notice to the public of the lien against the land so assessed, and no other record or notice thereof shall be necessary to any person or corporation for that purpose. No error, omis- [fol. 60] sion or mistake in regard to the name of the owner shall be held to invalidate any assessment. Said assessment book shall be kept in the office of the Director of Finance of the Municipality, and as fast as any assessment list, whether said assessment list shall cover a complete improvement under one contract, or portion of said improvement as completed for the part, section or parcel thereof completed, has been made, it shall be delivered to the Director of Finance, who shall thereupon publish the same once a week for two weeks in some newspaper published in said Municipality, together with a notice that at the time and place mentioned in said notice, not less than 15 days from the date of first publication, the Governing Authority of said Municipality will meet to hear and determine any objections or defenses that may be filed to said assessments or the amounts thereof. Such notices shall also state the general character of the improvements, the terminal points thereof, the streets, highways, boulevards,

avenues, squares, lanes, alleys and parts or portions thereof, on which the improvement has been completed.

Section 10. Said assessments shall be made and apportioned as the Governing Authority may determine, and the Governing Authority may direct that the cost and expense of the improvements hereby authorized shall be apportioned as follows: The whole or such part as the Governing Authority may fix may be assessed upon property specially benefited by the improvement, in proportion to the benefit to be derived therefrom; or if the Governing Authority shall find that all the property abutting on such improvement is specially benefited, it may direct that the whole or such part of the cost and expenses thereof as it shall fix be assessed against the property abutting upon the improvement according to the frontage thereof.

[fol. 61]

Section 11. All engineering and inspection costs, including a proper proportion of the compensation, salaries and expenses of the engineering staff of the Municipality, properly chargeable to any improvement, shall be deemed a part of the cost of the improvement, and all other costs incident to the laying and levying of said lien, filing and recording the same, shall be deemed a part of the cost of such improvement and may be prorated against the property assessed, in such manner as the Governing Authority may determine.

Section 12. If there be a steam, electric, or other railway track on any street, highway or other public th-roughfare, improved, paved, or re-paved, under the provisions of this Act, the cost of such improvement between the tracts and the rails of the tracks, and in case there be two or more tracks, and eighteen inches on each side thereof, including switches and turnouts, shall be paid by the owner of the railroad, and shall be assessed to and form a lien on said railroad property connected therewith. In the event storm or other sewers are constructed under the provisions of this Act, which drain the streets or other public thoroughfares and rights-of-way in which a steam, electric or other railroad has been constructed, there shall be assessed against such railroad a fair and just proportion of the cost of construction of such sewer, to be determined by the Governing Authority of said Municipality, and such assessment

[fol. 62]

shall be a lien upon the said railroad like other improvements under this Act; provided, however, that nothing herein contained shall affect the right or power of the Governing Authority of said Municipality to require the owner of such railroad to repair or reconstruct the tracks or the pavement between the same and on either side thereof, under any franchise granted to such owner or its predecessors in title.

Section 13. The owner of any real estate assessed for an improvement, or any party having an interest therein, may appear at the time and place fixed for the said hearing and object to the proposed assessment against the property or to the amount thereof. The Governing Authority of the Municipality shall hear and determine all objections and protests to the proposed assessments under such reasonable rules and regulations as it may adopt. It shall have authority by the Mayor, Clerk or other executive officers, to issue subpoenas for witnesses to appear before it, or before any committee appointed by it, and to administer oaths to the witnesses to be examined. At such meeting, [fol. 63] or at any adjourned meeting thereof, the Governing Authority may alter, change and correct any assessments; provided, however, that no assessments shall be increased without notice to the owner of the property and to all persons interested therein. The Governing Authority shall by resolution approve and endorse all assessments as finally fixed and adjusted at the said hearing and such assessments shall, from the date of such confirmation, constitute a lien on the respective lots or parcels of land, or other real property upon which they are levied, superior to all other liens except those for State and County taxes. All persons who fail to object to the proposed assessments in the manner herein provided, shall be deemed to have consented to and approved the same.

Section 14. A certified copy of the Assessment List of unpaid assessments, or portions thereof, as finally confirmed by the Governing Authority, shall also be recorded in the office of the Clerk of the Circuit Court for the Judicial Circuit in which the Municipality is situated, and the liens evidenced thereby shall be indexed by the said Clerk in the same manner as other liens are indexed by him.

Section 15. For the period of thirty days after the date of the confirmation of any special assessment, any person aggrieved shall have the right to contest the legality thereof, by suit, action, writ or special proceeding, after which time [fol. 64] no suit, action, writ or special proceeding, in any manner questioning the legality of the said special assessment shall lie for any cause whatsoever.

Section 16. All special assessments levied under the provisions of this Act shall be payable in full thirty days after the confirmation thereof; provided, however, that the Governing Authority of the Municipality may by resolution provide for the payment of any assessment in not exceeding ten (10) equal annual instalments, from date thereof, with interest thereon not exceeding eight per cent per annum, payable annually on all unpaid assessments; provided, however, that the owner of the property so assessed may pay at any time the full amount then remaining unpaid, by paying the entire principal and interest due thereon, until the next annual interest date. The owner of any property failing to pay the assessments on or before thirty days from the confirmation of the assessments thereof, shall be deemed to have consented to pay said assessments and interest thereon in annual instalments, as hereinbefore provided; and all unpaid assessments, penalties and interest shall be and remain a lien on each lot or parcel of land or other property, respectively, in favor of the Municipality, and such lien shall have priority over all other liens and incumbrances whatsoever, except the liens for State and County taxes.

Section 17. The proceeds derived from the sale of bonds hereof, together with the prompt payment of all assess- [fol. 65] ments against property that may be prior to the time of the final confirmation of the assessment list and the filing and recording of the same, shall constitute a fund for the payment of any contract made hereunder and other expenses incident thereto and as herein provided for, and said fund may be used, as work progresses from time to time and is completed and accepted, to pay for the same.

Any and all sums accruing to the Municipality by the payment of liens after the same shall have been imposed and recorded, whether paid annually in instalments as provided, or whether paid before maturity, together with the

interest thereon, and together with any and all sums accruing to the Municipality as — result of such lien, shall constitute a fund for the payment of bonds herein authorized; and the said Governing Authority may deposit said funds from time to time with any bank upon such terms as may be mutually agreed upon, or may invest the same in good securities maturing on or before the maturity of said bonds, or in other short time bonds, subsequently issued by the said Municipality under the provisions of this Act, or in paving liens issued by said Municipality as otherwise provided in the Charter of said Municipality.

And should special assessments levied, imposed and collected as herein provided, or any tax herein provided, be insufficient at any time to provide prompt payment of principal and interest on said bonds hereinafter provided, the Governing Authority is authorized and empowered to borrow sums to meet said principal and interest promptly and repay the same out of subsequent assessment collections or [fol. 66] subsequent tax assessment collections as otherwise provided in this Act.

Section 18. All assessments and instalments of assessments shall bear interest at the rate of one per cent per month after the date when the same respectively become due and payable, and in the event of default in the payment of any instalment of an assessment, all unpaid instalments, together with the interest thereon, shall immediately become due and payable.

Section 19. If any assessment be in default for thirty days, the Municipality may enforce the same by a bill in equity or by a suit at law. The bill in equity or the declaration at law shall set forth brief and succinctly the making of the assessment, the lien thereof, the amount thereof, and the description of the property upon which such lien has been acquired, and shall contain a prayer that the owner shall pay the amount of said lien, or in default thereof, that the said property shall be sold to satisfy the same, and in the decree or judgment, as the case may be, an order shall be entered for the sale of the property and the collection of the amount for which said lien is given. Decree of judgment shall also be rendered for a reasonable attorney's fee and costs, shall also be a lien upon the said land and shall be collected at the time and in the manner provided for the correction of the

amount for which the lien was originally given; but in no event shall the Municipality be liable for the payment of the [fol. 67] attorney's fee herein provided for. In the proceeding provided for in this Act, the owner or owners of the land, and any persons interested therein, if they can be ascertained, shall be parties defendant. If the owner or owners, or parties interested, cannot be ascertained after diligent inquiry, the proceedings shall be against the property on which the lien is claimed without mentioning any party as defendant. In such case service shall be had by a notice of the commencement of said suit for the enforcement of the said lien, by advertisement in a newspaper published in the Municipality, once a week for four consecutive weeks. In all proceedings to enforce said liens, or any of them, save in cases where the owner or person cannot be ascertained, service shall be made in the same manner as provided by law for service in other cases.

Section 20. If any special assessment made hereunder to defray the whole or any part of the expense of any local improvement shall be either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the Governing Authority of the Municipality shall be satisfied that any such assessment is so irregular or defective that the same cannot be enforced and collected, or if the Governing Authority shall have omitted to make such assessment when it might have done so, the Governing Authority of the Municipality is hereby authorized to take all steps to cause a new assessment for the whole or any part of any [fol. 68] improvement, or against any property benefited by any improvement, following as near as may be the provisions of this Act, and in case such second assessment shall be annulled, the Governing body may obtain and make other assessments until a valid assessment shall be made.

Section 21. No omission, informality, or irregularity in the proceedings in or preliminary to the making of any special assessment shall affect the validity of the same, where the assessment roll has been confirmed by the Governing Authority, and the assessment roll and the record thereof kept by the City Clerk shall be competent and sufficient evidence that the assessment was duly levied and the assessment roll duly made and adopted and that all other proceedings adequate to the adoption of said assessment roll was

duly had, taken and performed, as required by this statute. No failure of the City Clerk to record the assessment roll, or of the said Clerk or any other officer to deliver the same to the Director of Finance or to the Clerk of the Circuit Court, on or before the time prescribed for such delivery, or to do any other act or thing by him required, shall in any way invalidate any assessment; and no variance from the directions herein contained as to the form and manner of any of the proceedings shall be held material, unless it be clearly shown that the party objecting was materially *objected* thereby.

Section 22. In case any special assessment shall in any suit where its validity shall be questioned, be adjudged invalid, the Governing Authority may in its discretion notify [fol. 69] the Director of Finance to cease the collection of the same, if it shall have been transmitted to him for collection, and may proceed anew by proceeding either as in case of an original special assessment for the same purpose or by taking up the previous proceeding at any point, and may make and levy a new assessment in the place and stead of the assessment which shall have been adjudged invalid, and the Clerk of the Municipality before delivering such new assessment to the Director of Finance for collection shall ascertain and note thereon payments which have been made on such invalid assessment for the same purpose, which notation shall cancel the assessments as to the parcels and lots on which such payments were made, to the extent of the payments. Such new assessments shall be collected in the same manner as original special assessments.

Section 23. Should any improvement made hereunder be justly assessable against property owned by the Municipality, or against other property against which a lien cannot be enforced by said Municipality, the Governing Authority shall proceed to assess the amount due therefor against said property, fairly and proportionately as assessments are made against other property in said section, territory or street and shall determine the final cost of said assessments, proportionately, fairly and justly, as other assessment is made, determined and apportioned, and shall enter the same in a separate assessment list, to be kept in the office of the [fol. 70] Director of Finance (and not to be filed with the Clerk of the Circuit Court), and annually the Governing

Authority, or such officers as are charged with the making of the budget for the Municipality, shall provide in the annual budget or assessment levy a sufficient sum to pay annually the amount of principal and interest maturing on said assessment, and upon collection thereof shall pay the same into the fund provided in Section 17 of this Act, providing for interest and sinking fund for said bonds; provided, however, that nothing contained in this section shall prohibit the Municipality from financing by any method within its power any improvement against its own property or against any other property within the Municipality, against which a lien cannot be issued.

Section 24. The term "local improvements" as referred to in Section 1 of this Act shall be construed to mean the following improvements and no others, namely:

(a) Streets, highways, boulevards, avenues, squares, lanes, alleys and parks, or any part thereof, may be opened, re-opened, widened, graded, re-graded, paved, re-paved, surfaced, or re-surfaced, and curbs and gutters may be constructed or re-constructed therein.

(b) Sanitary sewers, storm sewers and other drains or sewers may be laid or re-laid and constructed or re-constructed in any street, highway, boulevard, avenue, square, lane, alley or park.

Section 25. This Act shall not repeal any other statute relating to the subject matter hereof, unless in conflict, nor in any way abridge, limit or amend the powers of the Muni- [fol. 71] cipality as contained in any section of the Charter thereof, or in Sections 1906 and 1907 of the Revised Statutes of the State of Florida, but shall be deemed to provide a supplemental, additional and alternative method of procedure for the benefit of said Municipality, and shall be liberally construed to effectuate its purpose, and should any part thereof be held invalid, the same shall not operate to defeat the other provisions hereof.

Section 26. This Act shall go into effect immediately upon its passage and approval by the Governor or upon its becoming a law without his approval.

Approved June 6th 1923.

[fol. 72] State of Florida

In God We Trust

Office of Secretary of State

I, R. A. Gray, Secretary of State of the State of Florida, do hereby certify that the above and foregoing is a true and correct copy of Chapter 9914, No. 796, Laws of Florida, Session 1923, as approved by the Governor and filed in this office.

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capital, this the 2nd day of April, A. D. 1931.

R. A. Gray, Secretary of State. (Great Seal of the State of Florida. In God We Trust.)

[fol. 73] In Circuit Court of Pinellas County

[Title omitted]

Special Demurrer—Filed May 4, 1931

Comes now City of St. Petersburg, defendant herein, by and through its undersigned solicitors and says that so much and such parts of the Amended and Supplemental Bill of Complaint filed herein as seek to have the provisions of Section 9914 of the Acts of 1923 declared unconstitutional and void, and the allegations upon which said prayer is predicated, or said relief is sought, are bad in substance, and demurs thereto, and as grounds of demurrer says:

1. Because same sets forth the legal conclusions of the pleader.

2. None of the grounds set forth in such allegations are sufficient to invalidate said Act, or any portion thereof.

3. Because the grounds of alleged invalidity are vague [fol. 74] and indefinite.

4. The complainants have not shown themselves to be in position to attack the validity of said Act, or any portion thereof.

5. The complainants have an adequate and complete remedy at law.

Carroll R. Runyon, Raney H. Martin, Solicitors for Defendant.

STATE OF FLORIDA,
Pinellas County:

Before the undersigned authority, on this day personally appeared J. D. Pearce, who, being first duly sworn, deposes and says he is Mayor-Commissioner of the City of St. Petersburg, defendant herein; that the above and foregoing demurrer is interposed in good faith and not for the purpose of delay.

J. D. Pearce.

Sworn to and subscribed before me this the 4th day
[fol. 75] of May, A. D. 1931. Lillian M. Thompson, Notary Public, State of Florida. My Commission expires: Oct. 9, 1931. (Notarial Seal, Lillian M. Thompson, Florida.)

I, Raney H. Martin, of Solicitors for Defendant, do hereby certify that in my opinion the above and foregoing demurrer is well founded in point of law.

Raney H. Martin.

[File endorsement omitted.]

[fol. 76] In Circuit Court of Pinellas County

[Title omitted]

SPECIAL DEMURRER TO ENTIRE BILL—Filed May 4, 1931

Comes now the defendant, City of St. Petersburg, a municipal corporation, by and through its undersigned solicitors, and says that the Amended and Supplemental Bill of Complaint filed herein is bad in substance and demurs thereto, and as grounds of demurrer sets forth the following:

1. The complainants have a full, adequate and complete remedy at law.

2. It appears from the face of said bill that the complainants are guilty of laches.

3. The bill sets forth the legal conclusions of the pleader.

4. It appears from the face of the bill and the proceedings herein that the time to institute proceedings herein to set aside the assessment herein complained of had expired prior to the commencement of the action.

5. It appears from the face of the bill that the complain-[fol. 77] ants, or either of them, failed to object to the levying of assessment herein complained of at the time and place required by law.

Carroll R. Runyon, Raney H. Martin, Solicitors for Defendant.

STATE OF FLORIDA,
Pinellas County:

Before the undersigned authority, on this day personally appeared J. D. Pearce, who, being first duly sworn, deposes and says he is Mayor-Commissioner of the City of St. Petersburg, defendant herein; that the above and foregoing demurrer is interposed in good faith and not for the purpose of delay.

J. D. Pearce.

[fol. 78] Sworn to and subscribed before me this the 4th day of May, A. D. 1931. Lillian M. Thompson, Notary Public, State of Florida. My Commission expires Oct. 9, 1931. (Notarial Seal, Lillian M. Thompson, Florida.)

I, Raney H. Martin, of Solicitors for Defendant, do hereby certify that the above and foregoing demurrer in my opinion is well founded in point of law.

Raney H. Martin.

[File endorsement omitted.]

[fol. 79] In Circuit Court of Pinellas County

[Title omitted]

GENERAL DEMURRER—Filed May 4, 1931

Comes now the defendant, City of St. Petersburg, a municipal corporation, by and through its undersigned solici-

tors and says that the Amended and Supplemental Bill of Complaint filed herein is bad in substance and demurs thereto, and as grounds of demurrer sets forth the following:

1. There is no equity in the bill.

2. It appears from the face of the bill that the complainants are guilty of lasches.

3. The complainants have a full, complete and adequate remedy at law.

4. It appears from the face of the bill, and the proceedings herein that the time within which this action might have been commenced had expired prior to the commencement of this action.

5. It does not appear that the complainants herein appeared and objected to the spreading of assessment in the bill of complaint at the place and within the time required by law.

Carroll R. Runyon, Raney H. Martin, Solicitors for Defendant.

[fol. 80] STATE OF FLORIDA,
County of Pinellas:

Before the undersigned authority, on this day personally appeared J. D. Pearce, who, being first duly sworn, deposes and says he is Mayor-Commissioner of the City of St. Petersburg, defendant herein; that the above and foregoing demurrer is interposed in good faith and not for the purpose of delay.

J. D. Pearce.

Sworn to and subscribed before me this 4th day of May, A. D. 1931. Lillian M. Thompson, Notary Public, State of Florida. My Commission expires Oct. 9, 1931. (Notarial Seal, Lillian M. Thompson, Florida.)

I, Raney H. Martin, of Solicitors for Defendant, do hereby certify that in my opinion the above demurrer is well founded in point of law.

Raney H. Martin.

[fol. 81] In Circuit Court of the Sixth Judicial Circuit of the State of Florida, in and for Pinellas County

Chancery No. 10,541

MATILDA J. UTLEY, Joined by Her Husband, D. T. UTLEY, and D. T. UTLEY, Complainants,

vs.

CITY OF ST. PETERSBURG, a Municipal Corporation, Defendant

ORDER SUSTAINING DEMURRER AND DISMISSING BILL—Filed June 2, 1931.

This cause having heretofore come on to be heard on General Demurrer to the Amended and Supplemental Bill and Special Demurrer to the entire bill, and on Special Demurrer to so much and such parts of said Amended and Supplemental bill as seek to have the provisions of Chapter 9914 of the Acts of the Legislature of Florida of 1923 declared unconstitutional and void, and the said Demurrers [fols. 82-102] having been argued by counsel for the respective parties, and the court being advised in the premises,

It is, therefore, ordered that the Special Demurrer to so much and such parts of the Amended and Supplemental Bill herein as seek to have the provisions of Chapter 9914 of the Acts of 1923 declared unconstitutional and void be, and the same is, hereby sustained.

It is further ordered that the General Demurrer and the Special Demurrer to the entire bill be, and each of them are, hereby sustained.

And counsel for the complainants having stated to the Court that he did not wish to amend his said bill, it is further ordered that the same be and the same is hereby dismissed.

Done and ordered at chambers in St. Petersburg, Florida, this 1st day of June, A. D. 1931.

T. Frank Hobson, Circuit Judge.

[fol. 103] IN SUPREME COURT OF FLORIDA

Chancery Number Below 10,541

MATILDA J. UTLEY, Joined by her Husband, D. T. UTLEY, and D. T. UTLEY, Appellants,

vs.

CITY OF ST. PETERSBURG, a Municipal Corporation, Appellee

Appeal from the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County

PETITION TO SUBSTITUTE GRANTEE AS APPELLANT IN PLACE OF MATILDA J. UTLEY, DECEASED

To the Honorable Judges of the Supreme Court of the State of Florida:

Comes now F. J. Utley, Grantee, whose place of residence is 15052 Ardmore Avenue in the City of Detroit and State of Michigan in the United States of America, and also, D. T. Utley, one of the appellants herein, by and through their undersigned solicitor, and represents unto the Court the following facts, to-wit:

That after the appeal herein which was returnable before your Honors on the 31st day of July 1931 (See Notice of Appeal, Transcript Page 120), and after the said appeal had been submitted to your Honors for decision, the said F. J. Utley, one of your petitioners, purchased the real estate involved in this cause of action for a valuable consideration and the same was transferred and deeded to F. J. Utley, one of your petitioners, by the appellee herein, [fol. 104] Daniel T. Utley, (Also known as D. T. Utley), joined by his wife Matilda J. Utley, on April 30th, 1932, which said deed was duly executed, signed, sealed and delivered by the said appellants in the presence of two attesting and subscribing witnesses and acknowledged by them before a Notary Public in and for the State of Florida at Large, duly qualified and acting and that the said Matilda J. Utley, wife of the said Daniel T. Utley, acknowledged the execution of the said deed before the said Notary Public separately and apart from her said husband in the manner

required by the laws and statutes of the State of Florida respecting acknowledgments of married women in the conveyance of real estate in the State of Florida. Your petitioners further say that the aforesaid warranty deed so executed and acknowledged was delivered to E. J. Utley, one of your petitioners, and subsequently recorded among the public records of Pinellas County, Florida, in Deed Book 670, Pages 195 and 196. The original of said deed is attached to this petition, marked exhibit "A", and made a part hereof as fully to all intents and purposes as if incorporated herein in haec verbis.

Your petitioners would further show unto your Honors that the real estate conveyed to F. J. Utley, one of your petitioners, by the appellants herein as above mentioned, was and is:

Lot Six (6), Block Eight (8) of Central Park Subdivision, according to the map or plat thereof on file and of record in the office of the Clerk of the Circuit Court of Pinellas County, Florida, in Plat Book I, Page 39,

and the same real estate described in the Bill of Complaint, title to which is deraigned in the appellants herein from the Government of the United States of America, (Transcript Pages 2 to 5 inclusive).

Your petitioners would further show unto your Honors that by the record herein (Transcript Pages 2 to 5 inclusive), that appellants, Matilda J. Utley and D. T. Utley, [fol. 105] her husband, were the owners of said real estate as an estate by the entireties and that subsequent to the date of the deed above mentioned and hereto attached, as exhibit "A", the said Matilda J. Utley, one of the appellants and the wife of the appellant D. T. Utley, deceased leaving the said D. T. Utley as her relict and the said D. T. Utley having warranted title of the said real estate in the conveyance to F. J. Utley, one of your petitioners (See exhibit "A" hereto attached), is entitled under the statutes of the State of Florida to continue in this suit as one of the parties appellant.

The premises considered, your petitioners therefore move your Honors for entry of an order herein substituting your petitioner F. J. Utley, the Grantee, as one of the parties appellant in the place and stead of Matilda J. Utley deceased

and that hereafter said cause be styled as: F. J. Utley, and D. T. Utley, Appellants, vs. City of St. Petersburg, a municipal Corporation, Appellee.

And your petitioners will ever pray.

L. D. Martin, Solicitor for Petitioners.

Duly sworn to by D. T. Utley. Jurat omitted in printing.

[fol. 106] Receipt is hereby acknowledged and service accepted of a true and correct copy of the foregoing petition, this 13th day of March, A. D. 1933.

Erle B. Askew, Solicitor for Appellee.

[fol. 107] EXHIBIT "A" TO PETITION

Warranty Deed

Deed 670, Page 195

[Cancelled Florida Revenue Stamp 10¢.]

This Indenture, Made this 30th day of April A. D. 1932 between Daniel T. Utley (Also known as D. T. Utley) joined by his wife Matilda J. Utley of the County of Pinellas and State of Florida, parties of the first part, and F. J. Utley residing in the City of Detroit, of the County of Wayne and State of Michigan, party of the second part,

Witnesseth, that the said parties of the first part, for and in consideration of the sum of One dollar and other valuable considerations Dollars, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and transferred, and by these presents do grant, bargain, sell and transfer unto the said party of the second part and his heirs and assigns forever, all that certain parcel of land lying and being in the County of Pinellas and State of Florida, more particularly described as follows:

Lot Number Six (6) Block Eight (8) of Central Park Subdivision, City of St. Petersburg, as per the map or

plat thereof on file and of record in the office of the clerk of the Circuit Court, Pinellas County, Florida.

This deed is given subject to any and all valid and subsisting liens of record against same, which liens party of the second part does not assume and agree to pay.

Together with all the tenements, hereditaments and appurtenances, with every privilege, right, title, interest and estate, dower and right of dower, reversion, remainder and easement thereto belonging or in anywise appertaining: To have and to hold, the same in fee simple forever.

And the said part- of the first part do covenant with the said part- of the second part that they are lawfully seized of the said premises; that they are free from all incumbrance, except as above cited, and that they have good right and lawful authority to sell the same; and the said parties of the first part do hereby fully warrant the title of said land, and will defend the same against the lawful claims of all persons whomsoever.

In witness whereof, the said parties of the first part have [fol. 108] hereunto set their hands and seals the day and year above written.

(Signed) Daniel T. Utley, Matilda J. Utley. (Seal.)

Signed, sealed and delivered in our presence:
(Signed) Frank Smith, Irving H. Beebe, Jr.

Deed 670, Page 196

STATE OF FLORIDA,
County of Pinellas, ss:

I hereby certify, that on this 30th day of April, A. D. 1932, before me personally appeared Daniel T. Utley and Matilda J. Utley, to me known to be the persons described in and who executed the foregoing Deed and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned; and the said Matilda J. Utley, the wife of the said Daniel T. Utley on a separate and private examination taken and made by and before me, and separately and apart from her said husband, did acknowledge that she made herself a party to the said Deed for the purpose of renouncing, relinquishing and conveying all her right, title and interest, whether of dower or of separate property, statutory or equitable, in and to

the lands therein described, and that she executed said Deed freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from her said husband.

Witness my hand and official seal at St. Petersburg in the County of Pinellas and State of Florida, the day and year last aforesaid.

(Signed) A. D. Powers, Notary Public, State of Florida at Large. My commission expires Oct. 19, 1932. (Notarial Seal.)

[fol. 109] [Endorsed:] 457176. Warranty Deed. Daniel T. Utley et wife to F. J. Utley. Date: 4-30-32. Description: Lot 6, Blk. 8, Central Park. State of Florida, County of Pinellas. Filed for record in the office of the Clerk of the Circuit Court of the County of Pinellas, State of Florida, *on the* 5:00 P. M. *day of* May 19, 1932, and recorded in Deed Record No. 670 on page 195 and the Record veried. K. B. O'Quinn, Clerk of the Circuit Court, by D. McGarrah, D. C. (Official Seal.)

[fol. 110] IN SUPREME COURT OF FLORIDA

[Title omitted]

STIPULATION RE PETITION FOR SUBSTITUTION

It is stipulated and agreed by and between L. D. Martin, Solicitor of Record, for the appellants herein, and Erle B. Askew, Solicitor of Record, for the Appellee herein, that the Petition for Substitution of F. J. Utley, Grantee, as a party Appellant in the place and stead of Matilda J. Utley, deceased, may be presented to and acted upon by the Honorable Judges of the Supreme Court of Florida at any time ex parte without any other or further notice to the Appellee.

It is further agreed that solicitor for appellee has received and accepted service of a true copy of the said petition.

Dated at St. Petersburg Florida, this 13th day of March, A. D. 1933.

L. D. Martin, Solicitor for Appellants. Erle B. Askew, Solicitor for Appellee.

[fol. 111] IN SUPREME COURT OF FLORIDA

[Title omitted]

ORDER GRANTING PETITION FOR SUBSTITUTION—March 13, 1933

This cause having been submitted to the Court upon petition of Counsel for Appellants to substitute F. J. Utley as Grantee as one of the parties Appellant in the place and stead of Matilda J. Utley, deceased, and same having been duly considered, it is ordered by the Court that said petition be and the same is hereby granted and that the substitution of parties Appellant as prayed be allowed.

[fol. 112] IN SUPREME COURT OF FLORIDA, DIVISION B, PINELLAS COUNTY, JUNE TERM, A. D. 1933

MATILDA J. UTLEY, Joined by Her Husband, D. T. UTLEY, Appellants,

vs.

CITY OF ST. PETERSBURG, a Municipal Corporation, Appellee

An Appeal from the Circuit Court for Pinellas County

T. Frank Hobson, Judge.

L. D. Martin for Appellant.

Earle B. Askew and Carroll R. Runyon for Appellee.

OPINION—Filed September 20, 1933

Per CURIAM:

Appellants filed amended and supplemental bill of complaint for the purpose of obtaining a decree cancelling certain paving certificates as cloud on the title of plaintiff to certain lands and for injunctive relief.

The complainants claim to the right of having the relief prayed decreed was grounded upon the contention that chapter 9914, Special Acts of the Legislature of 1923, under which the paving certificates were issued, was void because of the several provisions thereof being in conflict with certain provisions of the State and Federal Constitutions.

General and special demurrers were sustained and the amended and supplemental bill dismissed, from which decree appellants appealed.

It appears to us that all questions presented here have been heretofore settled by this Court adversely to the contention of the appellants and that no good purpose can be served by again re-stating principles of law applicable which have heretofore been clearly stated and adhered to [fol. 113] by this Court.

Chapter 14392, Special Acts of 1929, by its terms, validated all special assessments levied and imposed by the City of St. Petersburg and all certificates of indebtedness issued by the City of St. Petersburg prior to that Act becoming effective, as did also chapter 15511, Special Acts of the Legislature of 1931. The assessment here complained of was levied and the certificates of indebtedness were issued prior to the enactment of either of those Acts. Therefore, unless the Legislature was without authority to levy the assessment and to authorize the issuance of the certificates, the validating acts cured any defects which might have existed in connection with the issuance of the certificates. See Anderson vs. City of Ocala, 83 Fla. 344, 91 Sou. 182; also Walters vs. City of Tampa, 88 Fla. 177, 101 Sou. 227.

The sufficiency of the title to the Act may be sustained on authority of the opinions and judgments in the cases of Schiller vs. State, 49 Fla. 25, 38 Sou. 706; State ex rel. Davis vs. Rose, 97 Fla. 710, 122 Sou. 225; McSween et al. vs. State, 97 Fla. 749, 122 Sou. 239.

The contention that the Act violates section 20 of Article III of the Constitution has been decided adversely to the appellants' contention in the case of Milton et al. vs. City of Marianna, 105 Fla. 144, Sou. 400.

The contention that the act did not provide for due process of law has been adversely determined by this Court in the case of Anderson vs. City of Ocala, supra, and in many other cases, the most recent of which is that of City of Coral Gables, a Municipal Corporation, vs. Certain Lands, etc., in which opinion was filed May 10th, 1933.

The contention that the assessment here under consid- [fol. 114] eration and the issuance of the certificates constitutes the taking of property without due process of law was determined adversely to appellants' contention in the

case of City of Fort Myers vs. State, 95 Fla. 704, 117 Sou. 97; and again in Abel vs. Town of Boynton, 95 Fla. 984, 117 Sou. 507.

The contention that the act is unconstitutional and denies appellants due process of law because it authorizes the City authorities to levy and collect a general tax on all property for the payment of the bonded indebtedness in season and that the City had levied and collected a general tax for the purpose of discharging the debt, has been adversely determined by this Court in the case of Klemm vs. Davenport, 100 Fla. 627, 129 Sou. 904, as was also the contention that appellants were denied due process of law because they did not have the opportunity to vote on the issuance of the bonds.

We also think that the opinion in the case of Abel vs. Town of Boynton, supra, is applicable to the case now before us on the question of estoppel and that on authority of the decision in that case they were estopped from maintaining this suit for the same reasons which obtained in the suit of Abel vs. Town of Boynton, supra.

It appears, therefore, that the decree appealed from should be affirmed and it is so ordered.

Affirmed.

Davis, C. J., and Whitfield, Terrell and Buford, J. J., concur.

Brown, J., concurs in conclusion.

Ellis, J., not participating.

[fols. 115-127] IN SUPREME COURT OF FLORIDA, PINELLAS COUNTY, JUNE TERM, A. D. 1933

MATILDA J. UTLEY, Joined by Her Husband, D. T. UTLEY, Appellants,

vs.

CITY OF ST. PETERSBURG, a Municipal Corporation, Appellee

DECREE—September 20, 1933

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and argument of counsel for the respective parties,

and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellant his costs by him in this behalf expended, which costs are taxed in the sum of $—, all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause was this day ordered to be filed.

[fol. 128] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1933

F. J. UTLEY and D. T. UTLEY, Appellants,

vs.

CITY OF ST. PETERSBURG, a Municipal Corporation, Appellee

ORDER ALLOWING APPEAL

The appellants in the above-entitled suit, Frank J. Utley and Daniel T. Utley, otherwise known and referred to herein as F. J. Utley and D. T. Utley, respectively, and each of them, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree of affirmance made and entered in the above entitled suit by the Supreme Court of the State of Florida, on the 20th day of September, A. D., 1933, and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided.

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States, from the Supreme Court of the State of Florida, in the above entitled cause, as provided by law, and it is further [fols. 129–157] ordered that the Clerk of the Supreme Court of the State of Florida shall prepare and certify a tran-

script of the record, proceedings and decree of affirmance in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said court within forty days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of three hundred Dollars.

Dated: November 2, A. D. 1933.

Fred H. Davis, Chief Justice of the Supreme Court of the State of Florida. —— ——, Associate Justice of the Supreme Court of the United States.

[fol. 158] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed Dec. 7, 1933

Come now the appellants in the above cause, and state that the points upon which they intend to rely in this Court in this case are as follows:

Point No. I

The Supreme Court of Florida erred in its opinion filed September 20th, 1933, in the following particulars, and each of them, to-wit:

(a) In finding and holding that Chapter 14392, Special Acts of the Legislature of Florida of 1929, and Chapter 15511, Special Acts of the Legislature of Florida of 1931, validated and cured any defects in the special assessment complained of;

[fol. 159] (b) In finding and holding that Chapter 14392, Special Acts of the Legislature of Florida of 1929, and Chapter 15511, Special Acts of the Legislature of Florida of 1931, validated and cured any defects in the special improvement bonds complained of against appellants as general taxpayers;

because Chapter 9914, Special Acts of the Legislature of Florida of 1923, under which the paving complained of was done, does not provide for due process and equal protection

of the laws, under the First Section of the Fourteenth Amendment to the Constitution of the United States.

Point No. II

The Supreme Court of Florida erred in finding and holding that the Act complained of (Chapter 9914, Special Acts of the Legislature of Florida of 1923) provides for due process of law under the Fourteenth Amendment to the Constitution of the United States.

Point No. III

The Supreme Court of Florida erred in finding and holding that the special assessment under consideration and the issuance of certificates (bonds) did not constitute a taking of the property of appellants without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fol. 160] Point No. IV

The Supreme Court of Florida erred in its opinion filed September 20th, 1933, in holding that Chapter 9914, Special Acts of the Legislature of Florida of 1923, does not deny to appellants, as general taxpayers, due process of law under the First Section of the Fourteenth Amendment to the Constitution of the United States.

Point No. V

The Supreme Court of Florida erred in its opinion filed September 20th, 1933, in holding and finding that appellants were estopped from bringing suit for the following reasons, and each of them, to-wit:

(a) Chapter 9914, Special Acts of the Legislature of Florida of 1923, does not provide for due process and equal protection of the laws;

(b) The levy of the special assessment, issuance of bonds, and levy of general taxes to pay bonds, by appellee, amounts to a taking of appellants' property without due process and to a denial of the equal protection of the laws; and

(c) There is nothing in the record to show laches, waiver or any element of estoppel in support of such finding;

all contrary to the rights of appellants under the Due Process and Equal Protection of the Laws Clauses of the Fourteenth Amendment to the Constitution of the United States.

[fol. 161] Point No. VI

The Supreme Court of Florida erred in its opinion filed September 20th, 1933, in the following particulars, and each of them, to-wit:

(a) In affirming the order of the trial court which sustained the special demurrer to the entire bill;

(b) In affirming the order of the trial court which sustained the general demurrer to the bill;

(c) In affirming the order of the trial court which sustained the special demurrer to such parts of the bill as sought to have Chapter 9914, Special Acts of the Legislature of Florida of 1923, declared unconstitutional and void; and

(d) In affirming the order and final decree of dismissal of the trial court;

all because Chapter 9914, Special Acts of the Legislature of Florida of 1923, does not provide for due process and equal protection of the laws under Amendment Fourteen, and because appellants have been denied due process and the equal protection of the laws in the manner of levying the special assessment, issuance of bonds and levying a general tax to pay said bonds, contrary to said Amendment Fourteen to the Constitution of the United States.

Point No. VII

The Supreme Court of Florida erred in its opinion filed September 20th, 1933, in affirming the order and final decree of dismissal by the trial court, because Chapter 9914, Spe-[fol. 162] cial Acts of the Legislature of Florida of 1923, is a statute passed and enforced by the State of Florida, which abridges the privileges and immunities of appellants as citizens of the United States, contrary to the Fourteenth Amendment to the Constitution of the United States.

Point No. VIII

The Supreme Court of Florida erred in its opinion filed September 20th, 1933, in failing to find and hold void the special assessment complained of (R. 38), for want of existence of, and want of legislative determination of, benefits in denial of the rights of appellants to due process and to the equal protection of the laws, under Amendment Fourteen to the Constitution of the United States, because the bill alleges, and the demurrers admit, want of benefits and want of any legislative finding of benefits.

Point No. IX

The Supreme Court of Florida erred in its opinion filed September 20th, 1933, in failing to find and hold the ad valorem tax levy (R. 48) void, for want of provision in Chapter 9914, Special Acts of the Legislature of Florida of 1923, for the equal protection of the laws under Amendment Fourteen to the Constitution of the United States.

And the appellants further state that only the following parts of the record, as filed in this Court, need be printed by the Clerk for the hearing of the case:

[fol. 163] Title of paper	Record page
Bill of complaint and exhibits	1
Special demurrer	73
Special demurrer to entire bill	76
General demurrer	79
Order and final decree sustaining demurrer and dismissing bill	81
Petition to substitute grantee as appellant	103
Stipulation that petition be presented ex parte	110
Order granting said petition	111
Opinion of Supreme Court	112

Lloyd D. Martin, Counsel for Appellants.

[fols. 164 & 165] Acknowledgment of Service

Service of copy of foregoing Statement of Points to be Relied Upon and Designation of Parts of the Record to be

Printed in the above-entitled cause, acknowledged this 4th day of December, A. D. 1933.

W. F. Wry, C. R. R., Counsel and Solicitor for City of St. Petersburg, Appellee.

[fol. 166] [File endorsement omitted.]

Endorsed on cover: File No. 38,230. Florida Supreme Court. Term No. 627. F. J. Utley and D. T. Utley, appellants, vs. City of St. Petersburg, Florida. Filed December 7, 1933. File No. 627, O. T., 1933.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 627

F. J. UTLEY AND D. T. UTLEY, APPELLANTS,

vs.

CITY OF ST. PETERSBURG, A MUNICIPAL CORPORATION.

STATEMENT AS TO JURISDICTION ON APPEAL.

MAY IT PLEASE THE COURT:

The appellants, in support of the jurisdiction of this Court to review the above-entitled cause on appeal, respectfully represent:

A.

Statutory Provisions Sustaining Jurisdiction.

Judicial Code, Section 237, amended (U. S. C. A., Title 28, Section 344), provides, in part, as follows:

> "(*a*) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had * * * or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or

laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ.

"(*b*) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question * * * the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, etc.

"(*c*) If a writ of error be improvidently sought and allowed under this section in a case where the proper mode of invoking a review is by a petition for certiorari, this alone shall not be a ground for dismissal; but the papers whereon the writ of error was allowed shall be regarded and acted on as a petition for certiorari and as if duly presented to the Supreme Court at the time they were presented to the court or judge by whom the writ of error was allowed."

Chapter 14, Section 1, 45 Stat. 54 (U. S. C. A., Title 28, Section 861*a*), reads as follows:

"The writ of error in cases, civil and criminal is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

Chapter 14, Section 2, 45 Stat. 54, as amended April 26, 1928, Chapter 440, 45 Stat. 466 (U. S. C. A., Title 28, Section 861*b*), reads as follows:

> "The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

B.

Date of Decree and Date of Application for Appeal.

The decree sought to be reviewed was entered on the 20th day of September, 1933 (R. 112).

Petition for rehearing was duly filed and denied by order of the Supreme Court of Florida on October 12, 1933 (R. 125).

The application for appeal was presented on the 2d day of November, 1933 (R. 126).

C.

The Florida Statute the Validity or Constitutionality of Which is Involved.

The object and purpose of the suit is to test the constitutionality of Chapter 9914, Special Acts of the Legislature of Florida of the year 1923, and is found in volume 2 of the Acts of the Legislature of Florida of 1923, and is set out at pages 2679 to 2690, inclusive. A copy of said law, duly certified by the Secretary of State of the State of Florida under the great seal of said State, is set out in the record at pages 55 to 71 thereof and is attached to the bill as Exhibit "X".

A brief summary of the provisions of said Chapter 9914, Special Acts of the Legislature of Florida of 1923, is as follows:

Section 1 provides that the city is to estimate and determine the cost of improvements to be raised by special assessments and may, by resolution, issue improvement bonds as the general obligation of the municipality in an amount not exceeding 70 per cent of such estimate. Further provides for levy of an *ad valorem* tax on all property in the city for debt service on defaulted bonds.

Section 2 of said Act provides that such bonds shall be excluded from any limitation of indebtedness prescribed by the charter of the city, or otherwise, and for *ad valorem* tax to pay principal and interest on defaulted bonds.

Section 5 of said Act provides that said bonds shall be negotiable and shall not be invalid for any irregularity or defect in the proceedings and shall be incontestable in the hands of *bona fide* purchasers or holders for value.

Section 6 provides, among other things, that before issuing bonds the governing authority shall investigate and determine the legality of the proceedings and further provides that neither the municipality nor any taxpayer thereof shall be permitted to question the validity or legality of the obligation in any court in any action or proceeding.

Section 7 provides that the issuance of bonds shall not be submitted to a vote of the electors of the city.

Section 8 provides that said Chapter 9914 shall be sufficient unto itself without reference to other statutes or laws.

Section 9 provides for the recordation of liens for special improvements and that no other record or notice shall be necessary to any person or corporation; further provides that no error, omission, or mistake in regard to the name of the owner shall invalidate the assessment; provides for governing authority to hear objections after completion of work.

Section 10 provides that the governing authority may direct the whole or such part of the cost and expense of the improvement as it shall fix be assessed against the property abutting on the improvement according to the frontage thereof.

Section 13 provides that the governing authority of the city shall hear and determine all objections and protests to the proposed assessments after the work has been completed, as otherwise provided in said statute, and further provides that upon confirmation the assessment shall constitute a lien on the respective parcels of land superior to all other liens except for State and county taxes.

Section 14 provides for recordation of the assessment in the office of the clerk of the circuit court.

Section 15 provides that for thirty days after the date of confirmation of any special assessment any person aggrieved shall have the right to contest the legality thereof by suit, action, writ, or special proceeding, after which time no suit, action, writ, or special proceeding, in any manner questioning the legality of said special assessment, shall lie for any cause whatsoever.

Section 16 of said Act provides that the assessment shall be due and payable within thirty days after confirmation.

Section 17 of said Act provides, again, for the levying and collection of *ad valorem* tax on all taxable property within the city to pay interest and principal on defaulted bonds.

Section 18 of said Act provides for interest at 1 per cent per month in case of default in payment and for compulsory acceleration of installments.

Section 19 provides for the manner of enforcing collection of assessments under said Act.

Section 20 provides in case of an invalid assessment that repeated reassessments shall be made until a valid assessment is obtained.

Section 21 of said Act provides that no omission, informality, or irregularity in the proceedings in or preliminary to the making of any special assessment shall affect the validity of the same, and makes the record thereof kept by the city clerk sufficient evidence that the assessment was duly levied, and that all other proceedings adequate to the adoption of said assessment-roll were duly had, taken, and performed; provides that no failure of the city clerk to record the assessment-roll or of the said clerk, or any other officer, to deliver the same to the director of finance, or to the clerk of the circuit court, or to do any other act or thing by him required shall in any way invalidate any assessment, and no variance from the directions herein contained, as to the form and manner of any of the proceedings, shall be held material.

Section 22 provides, again, for reassessment in case of the invalidity of the old assessment.

Section 23 provides for mandatory assessment and collection of *ad valorem* tax to pay defaulted bonds.

Section 24 defines "local improvements."

Section 25 provides that said statute shall be a supplemental, additional, and alternative method of procedure.

D.

Nature of Case and Ruling Below.

The object and purpose of the bill filed in the trial court was to test the validity of Chapter 9914, Special Acts of the Legislature of Florida of 1923, as applied to appellants in the assessment of a lien for paving a street in the said city adjacent to the property of appellants.

Briefly summarized the bill alleges that appellants' property was located some forty blocks from the main business center of the city, in a sparsely-settled section; that a

street fifty feet wide was paved in front of their property and the entire cost assessed against the abutting property on either side of the street, including that of appellants, without the existence or legislative determination of any public convenience or necessity therefor, and that the assessment complained of was levied against the abutting property of appellants without the existence or legislative determination of benefits by the front-foot rule, all pursuant to and under the express terms and conditions of said Chapter 9914, Special Acts of the Legislature of Florida of 1923, contrary to the rights of appellants under the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Federal Constitution, and under the privileges and immunities clause of said amendment.

Also that improvement bonds covering the cost of said improvement were issued by the city and sold, and that certain of said bonds were delinquent, and that the city, under the mandatory provisions of said Chapter 9914, levied and assessed against the property of appellants an *ad valorem* tax to pay interest and principal on said defaulted bonds, and that the rights of appellants had been invaded, and that the levying of said assessement and the recordation thereof and the assessment of an *ad valorem* tax against their property amounted to a taking of property without due process of law and to a denial of the equal protection of the laws, because appellants, as taxpayers, were denied access to the courts at any stage of the proceedings; that said liens and assessment cast clouds on title of appellants to the real estate and resulted in irreparable injury, and the bill sought to enjoin the enforcement and collection of same because it amounted to a taking of the property of appellants without due process of law and to a denial of the equal protection of the laws, and to the passage and enforcement of a stat-

ute abridging the privileges and immunities of appellants as citizens of the United States under the Fourteenth Amendment to the Constitution of the United States.

One general and two special demurrers (R. 73) were interposed to the bill in the trial court, and all three demurrers sustained and the bill dismissed (R. 81).

Appeal was taken to the Supreme Court of Florida, which, by its *per curiam* opinion, held that said statute was attacked as being void because of the several provisions thereof being in conflict with the State and Federal Constitutions. (See opinion of court, R. 112.) The Supreme Court of Florida overruled the contention of appellants that said Chapter 9914 did not provide for due process of law under the Fourteenth Amendment to the Constitution of the United States, and also ruled adversely to the contention of appellants that the issuance of the certificate was a taking of property without due process of law. Also the court ruled adversely to the contention of appellants that the Act was unconstitutional and denies due process of law in the levying and collection of a general tax on all property for the payment of bonded indebtedness. While in the three instances mentioned the court does not expressly mention the Fourteenth Amendment to the Constitution of the United States, in the early part of the opinion the court says that the relief prayed was grounded upon the contention that Chapter 9914, Special Acts of the Legislature of Florida of 1923, under which the paving certificates were issued, was void because of the several provisions thereof being in conflict with certain provisions of the State and Federal Constitutions. This is, we submit, a ruling in three instances by the Supreme Court of Florida on the Federal question involved.

The curative acts referred to in the opinion have been judicially construed by the Supreme Court of Florida as curative acts and not legislative assessments in another

case. (See *Utley* v. *City of St. Petersburg*, 144 So. 54, at page 56.)

The question of estoppel referred to in the opinion of the Supreme Court of Florida is not supported by the record.

E.

Cases Believed to Sustain Jurisdiction.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

The Bell's Gap R. Co. v. *Pennsylvania*, 134 U. S. 232;
Miedreich v. *Lauenstein*, 232 U. S. 236;
Montana ex rel. Haire v. *Rice*, 204 U. S. 291;
Chicago, B. & Q. R. v. *Ill. ex rel. Grimwood*, 200 U. S. 561;
Broadwell v. *Carter County*, 253 U. S. 25;
Palmetto Fire Insurance Co. v. *Conn.*, 272 U. S. 295;
International Harvester v. *Missouri*, 234 U. S. 199;
Fiske v. *State of Kansas*, 274 U. S. 380;
Carpenter v. *Shaw*, 280 U. S. 363;
Nashville, C. & St. L. Ry. v. *White*, 278 U. S. 456;
Great Northern Ry. v. *State of Minnesota*, 278 U. S. 503.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Judicial Code, Section 237, amended (U. S. C. A., Title 28, Section 344); Chapter 14, Section 1, 45 Stat. 54 (U. S. C. A., Title 28, Section 861*a*), and Chapter 14, Section 2, 45 Stat. 54, as amended April 26, 1928, Chapter 440, 45 Stat. 466 (U. S. C. A., Title 28, Section 861*b*).

Respectfully submitted,

LLOYD D. MARTIN,
Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

NO. 627

F. J. UTLEY AND D. T. UTLEY, APPELLANTS,

vs.

CITY OF ST. PETERSBURG, FLORIDA

Appeal from the Supreme Court of the State of Florida.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

NO. 627

F. J. UTLEY AND D. T. UTLEY, APPELLANTS,

vs.

CITY OF ST. PETERSBURG, FLORIDA

Appeal from the Supreme Court of the State of Florida.

BRIEF FOR APPELLANTS

I

THE OPINIONS OF THE COURTS BELOW.

The opinion of the Florida Supreme Court herein sought to be reversed is reported in 149 So. 806. Said opinion, filed September 20th, 1933, is also found in the record at page 54. The order sustaining demurrers and dismissing the bill in the trial court is found at page 48 of the record.

II

STATEMENT OF THE CASE.

Matilda J. Utley, joined by her husband, D. T. Utley,

and D. T. Utley, as complainants in a cause previously instituted by them in the Circuit Court of Pinellas County, Florida, against the City of St. Petersburg, a municipal corporation, defendant, filed, on the 6th day of April, 1931, their amended and supplemental bill for cancellation of void paving certificates as a cloud on title and for injunctive relief (R. 1).

On the 4th day of May, 1931, a general and two special demurrers were filed to the said bill (R. 44 to 46, incl.). An order was entered June 1st, 1931, by the trial court, and recorded June 2nd, 1931, sustaining all three of said demurrers and dismissing the bill (R. 48).

Complainants appealed to the Supreme Court of Florida, and while the appeal was still pending and undetermined, D. T. Utley, one of the appellants, and F. J. Utley filed their petition for substitution of F. J. Utley, grantee, as appellant in the place and stead of Matilda J. Utley, deceased (R. 49), and stipulation of counsel showing service of a copy of the petition on appellee (R. 53). March 13th, 1933, an order was entered by the Supreme Court of Florida granting said petition and allowing the substitution of parties as prayed in the petition (R. 54).

September 20th, 1933, the Florida Supreme Court filed its written opinion affirming the lower court (R. 54), and from that opinion, after rehearing denied by said court, appeal to this Honorable Court has been allowed (R. 57).

A brief summary of the facts as they appear from the bill shows, among other things, the following:

That appellants were, and are, in actual possession (R. 17) and the owners, by proper deeds of conveyance, of the fee simple title of Lot Six (6), Block Eight (8), Central Park Subdivision, per plat of record in the Office of the

Clerk of the Circuit Court of Pinellas County, Florida, in Plat Book 1, page 39 (R. 2);

That said lot is situate on the South Side of First Avenue North in the City of St. Petersburg, Florida, between 47th and 48th Streets (R. 2), some forty blocks from the main business center of the City in a sparsely-settled section (R. 13);

That a street fifty feet wide was paved in front of appellants' property (R. 2, 3 and 20), and the entire cost assessed against the abutting property on both sides of the street, including property of appellants (R. 4, 5 and 22) by the front-foot rule (R. 3 and 4), and Notice of Lien dated September 6th, 1926, recorded by appellee against the property of appellants among the public records of Pinellas County, Florida, in Lien Book 21, page 363, and also recorded in Local Improvement Record 8, page 3, public records in the City Hall in the City of St. Petersburg, Florida (R. 4 and 5);

That the paving assessment complained of was levied without the existence of, and without the legislative determination of, any public convenience or necessity therefor (R. 16 and 17). Said assessment at $18.6895 per property foot was computed on the estimated cost $40,937.46 (R. 3) which exceeded the actual cost $30,206.17 (R. 4) by $10,731.29, and that the paving assessment complained of was levied against the abutting property of appellants in an amount greater by more than twenty-five per cent than the actual cost of the work, without the existence of benefits (R. 11 to 13, incl.), and without any legislative determination of benefits (see Assessment Resolution R. 22) by the front-foot rule (R. 3 and 12), all pursuant to and under the express terms, provisions and conditions of Chapter 9914,

Special Acts of the Legislature of Florida of 1923 (R. 8 to 13, incl., and 14 to 17, incl.), contrary to the rights of appellants under the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Federal Constitution, and under the privileges and immunities clause of said Amendment (R. 13).

Also, that $40,937.46 special improvement bonds, covering (R. 3) and, in fact, exceeding by more than twenty-five per cent the cost $30,206.17 of said paving (R. 4 and 17), included in a larger issue of bonds by the said City, were sold and delivered (R. 5 to 7, incl., for resolutions authorizing bonds see Exhibits "H" and "J", R. 25), and that certain of said bonds were delinquent as to both principal and interest (R. 7), and that the said City, under the mandatory provisions of said Chapter 9914, levied and assessed against the said property of appellants and ad valorem tax (R. 7, see Exhibit "K" for resolution R. 28) to pay interest and principal on said defaulted bonds (R. 7 and R. 31, Appropriation Ordinance Exhibit "L"), and that the levying of said assessment and recordation thereof, as well as the assessment of an ad valorem tax against their property, amounted to a taking of said property without due process of law, and to a denial of the equal protection of the laws, because appellants, as taxpayers, were denied the right to vote on issuance of bonds, denied any right to be heard at all, and forbidden the right to contest the validity or legality of the obligations (bonds) in any court, in any action or proceeding (R. 8, 11 and 12, and 17 and 18); that said liens and assessment cast clouds on the title of appellants to the said real estate and resulted in irreparable injury (R. 15). The bill further alleges that appellee threatens to foreclose said alleged assessment lien against appellants' property (R. 15).

The evils and wrongs visited upon the property and

rights of appellants by enforcement of the terms and provisions of said Chapter 9914, as made to appear in this cause, for refuge from which appellants must look to the protection of Amendment Fourteen to the Federal Constitution, are cumulative in their effect, and amount singly and in the aggregate to a denial of due process and of the equal protection of the laws, and to the enforcement of a law abridging the privileges and immunities of appellants as citizens of the United States, in violation of said Fourteenth Amendment.

A brief summary of the different provisions and sections of said Chapter 9914, complained of as being inimical to said Fourteenth Amendment, is as follows:

Section 1 provides that the city is to estimate and determine the cost of improvements to be raised by special assessments and may, by resolution, issue improvement bonds as the general obligation of the municipality in an amount not exceeding 70 per cent of such estimate; further, provides for compulsory levy of an ad valorem tax on all property in the city for debt service on defaulted bonds.

Section 2 of said Act provides that said bonds shall be excluded from any limitation of indebtedness prescribed by the charter of the city, or otherwise, and for compulsory levy of ad valorem tax to pay principal and interest on defaulted bonds.

Section 5 of said Act provides that said bonds shall be negotiable and shall not be invalid for any irregularity or defect in the proceedings and shall be incontestable in the hands of bona fide purchasers or holders for value.

Section 6 provides, among other things, that before issuing bonds the governing authority shall investigate and

determine the legality of the proceedings; and, further, provides that neither the municipality nor any taxpayer thereof shall be permitted to question the validity or legality of the obligation in any court, in any action or proceeding.

Section 7 provides that the bonds are not to be ratified or submitted to a vote of the electors of the City, and that bonds may be issued under this Act without respect to provisions of any other Act or Section of City Charter relative to the manner and sale of bonds.

Section 8 provides that this Act shall, without reference to any other Act of the Legislature of Florida, be full authority for the issuance and sale of bonds in the Act authorized * * * that no ordinance, resolution or proceeding in respect of the issuance of said bonds shall be necessary except such as is required by the Act; that no publication of any resolution, ordinance or proceeding relating to the issuance of bonds shall be required except such as is required by this Act.

Section 9 provides for the recordation of liens for special improvements and that no other record or notice shall be necessary to any person or corporation; further, provides that no error, omission, or mistake in regard to the name of the owner shall invalidate the assessment; provides for governing authority to hear objections after completion of work; provides, upon completion of any work * * and upon delivery of assessment list to Director of Finance, he shall publish notice once a week for two weeks of meeting of governing authority to hear and determine protests to said assessments.

Section 10 provides that said assessments shall be made and apportioned as the governing authority may determine

—and that governing authority may assess by the front-foot rule whole cost against abutting property.

Section 13 provides that governing authority is to hear and determine all the protests; governing authority shall confirm assessments which shall then be liens superior to all others except those for State and County taxes; that all persons failing to object to assessments in manner herein provided deemed to have consented to and approved same.

Section 14 provides for recordation of the assessment in the Office of the Clerk of the Circuit Court.

Section 15 provides that for thirty days after the date of confirmation of any special assessment, any person aggrieved shall have the right to contest the legality thereof by suit, action, writ, or special proceeding, after which time no suit, action, writ, or special proceeding, in any manner questioning the legality of said special assessment, shall lie for any cause whatsoever.

Section 16 provides that the assessment shall be due and payable within thirty days after confirmation.

Section 17 provides again for compulsory levying and collection of ad valorem tax on all taxable property within the city to pay interest and principal on defaulted bonds.

Section 18 provides for interest at 1 per cent per month in case of default in payment, and for compulsory acceleration of installments.

Section 19 provides for the manner of enforcing collection of assessments under said Act, and for attorney's fees; and, further, that the City shall not in any case be liable for such attorney's fees.

Section 20 provides in case of an invalid assessment that

repeated re-assessments shall be made until a valid assessment is obtained.

Section 21 provides that no omission, informality, or irregularity in the proceedings in, or preliminary to, the making of any special assessment shall affect the validity of same when confirmed. Record of assessment roll kept by City Clerk is competent and sufficient evidence that assessment is duly levied; assessment roll duly made and adopted and all other proceedings taken and performed according to this statute. No failure of Clerk to record the assessment roll, or to do any other act or thing by him required, shall in any way invalidate any assessment.

Section 22 provides again for re-assessment and collection thereof in case any assessment shall be adjudged invalid in the courts.

Section 23 provides for mandatory assessment and collection of ad valoreum tax to pay defaulted bonds.

Section 24 defines "local improvements."

Section 25 provides that said statute shall be a supplemental, additional, and alternative method of procedure.

Said Chapter 9914 is found in Vol. II, pages 2678 to 2690, inclusive, Special Acts of the Legislature of Florida of 1923. A duly exemplified copy of said Chapter 9914 is found in the record at pages 32 to 44, inclusive.

The prayer is for cancellation and injunction (R. 18 to 20, incl.) against the threatened enforcement and collection of said liens and assessment, because the action of the City, under and pursuant to the terms and conditions of said Chapter 9914, amounts to a taking of appellants' property without due process of law, and to a denial of the equal pro-

tection of the law, and that Chapter 9914 be held unconstitutional as not providing for due process and equal protection of the laws and as being a law, the making and enforcement of which abridges the privileges and immunities of appellants as citizens of the United States, contrary to the Fourteenth Amendment to the Constitution of the United States.

III

SPECIFICATION OF ERRORS.

1. The Supreme Court of Florida erred in its opinion filed September 20th, 1933, in the following particulars, and each of them, to-wit:

(a) In finding and holding that Chapter 14392, Special Acts of the Legislature of Florida of 1929, and Chapter 15511, Special Acts of the Legislature of Florida of 1931, validated and cured any defects in the special assessment complained of;

(b) In finding and holding that Chapter 14392, Special Acts of the Legislature of Florida of 1929, and Chapter 15511, Special Acts of the Legislature of Florida of 1931, validated and cured any defects in the special improvement bonds complained of against appellants as general taxpayers;

because Chapter 9914, Special Acts of the Legislature of Florida of 1923, under which the paving complained of was done, does not provide for due process and equal protection of the laws, under the First Section of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of Florida erred in finding and

holding that the Act complained of (Chapter 9914, Special Acts of the Legislature of Florida of 1923) provides for due process of law under the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of Florida erred in finding and holding that the special assessment under consideration and the issuance of certificates (bonds) did not constitute a taking of the property of appellants without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

4. The Supreme Court of Florida erred in its opinion filed September 20th, 1933, in holding that Chapter 9914, Special Acts of the Legislature of Florida of 1923, does not deny to appellants, as general taxpayers, due process of law, under the First Section of the Fourteenth Amendment to the Constitution of the United States.

5. The Supreme Court of Florida erred in its opinion filed September 20th, 1933, in holding and finding that appellants were estopped from bringing suit for the following reasons, and each of them, to-wit:

(a) Chapter 9914, Special Acts of the Legislature of Florida of 1923, does not provide for due process and equal protection of the laws;

(b) The levy of the special assessment, issuance of bonds, and levy of general taxes to pay bonds, by appellee, amounts to a taking of appellants' property without due process and to a denial of the equal protection of the laws; and

(c) There is nothing in the record to show laches,

waiver or any element of estoppel in support of such finding;

all contrary to the rights of appellants under the Due Process and Equal Protection of the Laws Clauses of the Fourteenth Amendment to the Constitution of the United States.

6. The Supreme Court of Florida erred in its opinion filed September 20th, 1933, in the following particulars, and each of them, to-wit:

(a) In affirming the order of the trial court which sustained the special demurrer to the entire bill;

(b) In affirming the order of the trial court which sustained the general demurrer to the bill;

(c) In affirming the order of the trial court which sustained the special demurrer to such parts of the bill as sought to have Chapter 9914, Special Acts of the Legislature of Florida of 1923, declared unconstitutional and void; and

(d) In affirming the order and final decree of dismissal of the trial court;

all because Chapter 9914, Special Acts of the Legislature of Florida of 1923, does not provide for due process and equal protection of the laws under Amendment Fourteen, and because appellants have been denied due process and the equal protection of the laws in the manner of levying the special assessment, issuance of bonds and levying a general tax to pay said bonds, contrary to said Amendment Fourteen to the Constitution of the United States.

7. The Suupreme Court of Florida erred in its opinion

filed September 20th, 1933, in affirming the order and final decree of dismissal by the trial court, because Chapter 9914, Special Acts of the Legislature of Florida of 1923, is a statute passed and enforced by the State of Florida, which abridges the privileges and immunities of appellants as citizens of the United States, contrary to the Fourteenth Amendment to the Constitution of the United States.

8. The Supreme Court of Florida erred in its opinion filed September 20th, 1933, in failing to find and hold void the special assessment complained of (R. 22), for want of existence of, and want of legislative determination of, benefits in denial of the rights of appellants to due process and to the equal protection of the laws, under Amendment Fourteen to the Constitution of the United States, because the bill alleges, and the demurrers admit, want of benefits and want of any legislative finding of benefits.

9. The Supreme Court of Florida erred in its opinion filed September 20th, 1933, in failing to find and hold the ad valorem tax levy (R. 28) void, for want of provision in Chapter 9914, Special Acts of the Legislature of Florida of 1923, for the equal protection of the laws under Amendment Fourteen to the Constitution of the United States.

IV

ARGUMENT.

The law in question, Chapter 9914, Special Acts of the Legislature of Florida of 1923, is applicable in its terms only to the City of St. Petersburg, the appellee, and under its provisions the said City has done a large amount of paving and assessed the entire cost against abutting property

under the same or similar circumstances as alleged in the bill. In a large number of cases—perhaps, the majority, the amount of the assessment greatly exceeded the benefits, as well as the value of the property, and to enforce collection is absolute confiscation for such property owners. While, nominally, on the record, the question is between appellants, as property owners, and the City, as to whether they should be compelled to pay for the paving in question, the real question is whether the property of appellants and of others similarly situated shall be confiscated in order that the City may have paved streets for all, or whether the City at large must pay for its streets without such confiscation of the property of abutting owners. It is for this reason that we believe the case is of very great importance, out of all proportion to the number of litigants, amount of money, or quantity of land involved in this cause as disclosed by the record.

SUMMARY OF POINTS TO BE ARGUED

Chapter 9914, Special Acts of the Legislature of Florida of 1923, under the terms of which the bonds were issued and sold, paving done, assessments levied and recorded and ad valorem tax levied for debt service on defaulted bonds, does not provide for due process of law, nor for the equal protection of the laws, and is a law the making and enforcement of which has abridged the privileges and immunities of appellants as citizens of the United States, contrary to their rights under Amendment Fourteen to the Constitution of the United States.

Said Amendment Fourteen to the Constitution of the United States provides, in Section 1 thereof, in part, as follows:

"NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS."

"Due process of law in this clause is the law of the land in each state."

Hurtado vs. Calif.,
110 U. S. 535.

And this process in the United States is regulated by the law of the state.

Walker vs. Sauvinet,
92 U. S. 92.

"In judging what is 'due process of law' respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or none of these, and if

found to be suitable or admissible in the special case, it will be adjudged to be 'due process of law'; but if found to be arbitrary, oppressive and unjust, it may be declared to be not 'due process of law.' "

Davidson vs. New Orleans,
96 U. S. 107.

"*What must constitute a denial of the equal protection of the law will depend in a large measure upon what rights have been conferred, or protection extended, under the constitution and laws of the particular state in which the question arises.*"

Nashville etc. R. Co. vs. Taylor,
86 Fed. 168.

Certiorari denied.
172 U. S. 647.

It becomes material, therefore, to inquire into the law of the State of Florida respecting the issue and sale of special improvement bonds by municipalities and the levying of general tax and of special assessments against abutting property for local improvements. This law is reflected in the Constitution of the State of Florida, and in the decisions of its Supreme Court.

Applicable provisions of the Florida Constitution are as follows:

Section 4, of the Declaration of Rights, reads, in part, as follows:

> *"All courts in this State shall be open, so that every person for any injury done him in his lands, goods, person or reputation shall have remedy, by due course of law."*
>
> "Constitutional guaranty of courts open to redress wrongs forbids invasion by State."
>
> Spafford vs. Brevard County,
> 92 Fla. 617.

Article III, Section 20, reads, in part, as follows:

> *"The Legislature shall not pass special or local laws in any of the following enumerated cases, that is to say * * regulating the practice of courts of justice, except municipal courts."*

Article III, Section 21, reads, in part, as follows:

> *"In all cases enumerated in the preceding section, all laws shall be general and of uniform operation throughout the State."*

Article V, Section 1, reads, in part, as follows:

> *"The judicial power of the State shall be vested in a Supreme Court, Circuit Courts, etc."*

Article V, Section 11, reads, in part, as follows:

> *"The Circuit Courts shall have exclusive orig-*

*inal jurisdiction in all cases * * involving the legality of any tax, assessment, or toll."*

Article II reads as follows:

"Distribution of Powers.—The powers of the government of the State of Florida, shall be divided into three departments; Legislative, Executive and Judicial; and no person properly belonging to one of the departments shall exercise any powers appertaining to either of the others, except in cases expressly provided for by this Constitution."

"Where the Legislature passes an Act, the provisions of which are clearly and manifestly an exercise of power properly belonging to the judiciary, it is unconstitutional."

Trustees Internal Imp. Fund vs. Bailey,
10 Fla. 238.

Article III, Section 16, reads, in part as follows:

"Each law enacted in the Legislature shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title."

Article IX, Section 5, reads, in part, as follows:

"The Legislature shall authorize the several counties and incorporated cities or towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes, and all property shall be taxed upon the princi-

ples established for State taxation. But the cities and incorporated towns shall make their own assessments for municipal purposes upon the property within their limits."

"Legislature may not delegate power to enact law or to declare what law shall be or to exercise unrestricted discretion in applying the law."

State ex rel. Davis Atty. Gen. vs. Fowler et al.,
94 Fla. 752.

"Acts may be declared constitutional or unconstitutional only by the Courts."

State ex rel. Nuveen vs. Greer et al.,
88 Fla. 249.

"Tax statutes must be construed strictly in favor of the taxpayer."

A. C. L. Ry. Co. vs. Amos, State Comptroller,
94 Fla. 120.

"Statutory regulations which do not afford reasonable notice and hearing before adjudication or before liability is established deprive of organic rights without due process of law and are inoperative."

Tibbetts vs. Olson et als.,
91 Fla. 824.

"This procedure relates to issuing certificates of indebtedness and does not clearly appear to afford a sufficient notice and an opportunity to be heard as to the validity and reasonableness of the projects or as to the benefits to the abutting property and the use of the road by the public, which hearing should appropriately be had before the improvement is provided or the assessment made."

Smith Bros., Inc., vs. Williams et al.,
100 Fla. 642.

"The taxing authority attempted to be conferred upon the Board is not limited by legislative provisions and the statute exceeds legislative authority."

Stewart vs. Daytona & New Smyrna Inlet Dist. et al.,
94 Fla. 859.

"Municipality's power to tax for paving streets and sidewalks rests upon public necessity."

A. C. L. R. Co. vs. City of Lakeland,
94 Fla. 347;

City of Fort Myers vs. State,
95 Fla. 704.

"Special assessment should not substantially exceed benefit reasonably expected."

Martin, Governor, et al. vs. Dade Muck Land Co.,
95 Fla. 530 (Syl. 20);

A. C. L. R. Co. vs. City of Lakeland, Supra.

"Before adopting resolution authorizing public improvements and bonds therefor, city commission must determine benefits will accrue to property involved, amount thereof, manner of prorating and that special assessments will be made proportionate to benefits."

City of Fort Myers vs. State,
95 Fla. 704.

"If a highway improvement is primarily for the benefit of the public and only secondarily or incidentally beneficial to abutting property, the imposition of the entire expense of the improvement upon the owners of the abutting property would be a violation of organic property rights."

Parrish vs. Hillsborough County et al.,
98 Fla. 430.

"Statute charging entire highway improvement cost against abutting property other than government-owned property held invalid as imposing entire cost on abutting property without reference to benefits."

Parrish vs. Hillsborough County et al.,
Supra.

"If reasonable doubt exists as to a particular power of a municipality it should be resolved against the city."

Malone vs. City of Quincy,
66 Fla. 52;

Ex Parte Davidson,
76 Fla. 272.

The following sections of Chapter 9914 invade the rights of appellants under the following provisions of the Florida Constitution, and are contrary to the law of the land:

Section 6 closes the courts to appellants, contrary to Section 4 of the Declaration of Rights. Section 6 invades the powers of the judiciary in delegating to the governing authority investigation and determination of validity of proceedings before issuing bonds contrary to Section [illegible], Article V, and Article II.

Section 19 attempts to regulate the practice in courts of justice contrary to Sections 20 and 21, Article III, which prohibits regulation of the practice in courts of justice by special act. Section 19 also provides for attorney's fees contrary to Article III, Section 16.

No hearing of any kind is provided at any time for the general taxpayer by any of the provisions of said Chapter 9914, and Section 6 denies him access to the courts, while Section 7 denies him the right as an elector to ratify by vote the issuance of bonds. Sections 1 and 2 make levy of ad-valorem taxes for debt service on defaulted bonds mandatory, and Sections 7 and 8 provide that said Chapter 9914 shall be sufficient authority unto itself for the issuance of bonds without reference to any other law. Section 2 pro-

vides that the bonds issued thereunder shall be excluded from any and all limitation of indebtedness.

Sections 5, 9 and 21 provide that no error, omission or informality in proceedings shall affect the validity. Section 10 provides that assessment may be levied as the governing authority shall determine. In the instant case they determined to levy it without the existence of, or legislative determination of, any public convenience or necessity, and without the existence or legislative determination of benefits to the property assessed.

No hearing as to benefits was had or even provided for until after the work was completed and $40,937.46 special improvement bonds in an amount greater than the cost of the work $30,206.17 (R. 4 and 17) had been issued and sold by the City, and the total assessments made on the amount of bonds which was more than twenty-five per cent greater than the cost of the work. After work done and bonds issued for more than the cost of the work, the governing authority is not a proper or impartial tribunal to hear complaints of property owners, as they would, at that stage of the proceedings, be more influenced by a desire to uphold the validity of their own completed acts than by a desire to give a fair hearing to the protests of property owners.

No provision is made in the Act for notice of any kind to the owner of the property proposed to be assessed until after bonds issued and sold and work completed, and, unless the notice and hearing after bonds issued and sold and work completed and assessment list delivered and recorded as a lien by the Director of Finance in the assessment book for local improvements, is in accord with the law of the land, the property owner has been deprived of his property by the City without due process of law, and has been denied the

equal protection of the laws under the Fourteenth Amendment.

Section 15 provides a supposed thirty-day statute of limitations after confirmation. Section 16 provides that the assessment shall be payable in thirty days after confirmation so that suit to contest the assessment is barred for any cause whatsoever on the same day it becomes due and payable. It would seem, then, that Section 15 provides a no-day statute of limitations while purporting to be a thirty-day statute of limitations.

Section 21 provides that no failure by the City Clerk to do any act or thing by him required shall in any way invalidate any assessment. Section 9 provides that the Director of Finance, who is the City Clerk, shall publish notice of hearing for protests and confirmation of assessments. The rights of the property owner are so lightly regarded in the statute that Section 21, as well as other sections, provides that no failure to do any act or thing by him required shall in any way invalidate the assessment.

Section 22 provides that in case any special assessment shall be adjudged invalid in any suit the governing authority may make and collect a new assessment in the place and stead of the assessment which shall have been adjudged invalid.

In fact, the provisions of Chapter 9914 are alike in that each section takes away some of the rights of appellants piece-meal, so that they have no rights under said statute. Section 22 says, in effect, to appellants that should, in any suit, the court adjudge the special assessment against your property to be invalid and unconstitutional, it will avail you nothing because the City is given the right to make and collect a new assessment in place of the one held invalid and to

make such new assessment, with power to collect, time without number in spite of any court ruling.

"A statute by the terms of which it may be possible for the total amount assessed to exceed the total benefits has been held to be unconstitutional irrespective of its effect in the particular case."

White vs. Gove,
183 Mass. 333.

"A statute which endeavors to make a legislative determination of benefits final is necessarily unconstitutional."

Bidwell vs. Huff,
103 Fed. 362.

"Equal protection of the laws forbids that one class suffer loss to enrich another."

Reagan vs. Farmers Loan & T. Co.,
154 U. S. 362.

"A hearing granted as a matter of favor or discretion cannot be deemed as a substantial substitute for the due process of law that the Constitution requires."

Coe vs. Armour Fertilizer Works,
237 U. S. 413.

"An opportunity to be heard in proceedings for taxation upon such notice as is usual in such proceedings is essential to due process of law."

Pittsburgh etc. R. Co. vs. Backus,
154 U. S. 421.

"Owners do have the right (to be heard as to benefits) where the district is not created by the legislature and there has been no legislative determination that their property will be benefitted by the improvement."

Browning vs. Hooper,
269 U. S. 396.

The Supreme Court of Florida erred in its opinion (R. 54), in finding and holding that Chapter 14392, Special Acts of the Legislature of Florida of 1929 (Vol. II, page 1972), and Chapter 15511, Special Acts of the Legislature of Florida of 1931 (Vol. II page 1725), validated and cured any defects in the special assessment complained of and in the special improvement bonds complained of against appellants as general taxpayers.

The Special Acts above referred to are curative Acts, and not legislative assessments.

Utley vs. City of St. Petersburg,
144 So. 53 at 56.

The bill alleges, among other things, that the paving was done and the assessment complained of levied without the existence of and without the legislative determination

of any public necessity or convenience therefor (R. 16), and that the paving assessment complained of was levied against abutting property of appellants by the front-foot rule (R. 3 and 12), without the existence of benefits (R. 11 to 13, incl.), and without any legislative determination of benefits (Authorizing Resolution R. 20, Assessment Resolution R. 22), all pursuant to and under the express terms and conditions of Chapter 9914, Special Acts of the Legislature of Florida of 1923 (R. 8 to 13, incl., and 14 to 17, incl.), contrary to the rights of appellants under the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Federal Constitution, and under the privileges and immunities clause of said Amendment (R. 12 and 13).

The demurrers filed to the bill by appellee (R. 44 to 46, incl.) admit, under the Florida practice, all the foregoing allegations.

Reid et al. vs. Barry,
93 Fla. 849.

The record discloses that there was never any legislative determination of special benefits accruing to the property involved in this suit.

The language of the ordering-in and assessment resolutions quoted and judicially construed by the Supreme Court of Florida in Utley vs. City of St. Petersburg, Supra., is identical and interchangeable with the language of the ordering-in (R. 20) and assessment resolutions (R. 22) in this case. The court held that such language did not amount to a legislaitve finding of benefits, and that the said curative Acts in question were, therefore, inapplicable.

Chapter 14392, Special Acts of the Legislature of Florida of 1929 (Vol. II page 1972) provides:

> "That all proceedings in the assessment and levy of taxes levied and imposed by the City of St. Petersburg on property taxable by it to and including the taxable year 1928, as also all taxes assessed and levied by said City of St. Petersburg on property taxable by it for each taxable year up to and including the taxable year 1928 be, and the same are hereby ratified, validated and confirmed. All laws and parts of laws in conflict herewith be, and the same are hereby repealed."

Chapter 15511, Special Acts of the Legislature of Florida of 1931 (Vol. II page 1725) provides as follows:

> "That all special assessments levied and imposed by the City of St. Petersburg, and also all certificates of indebtedness issued by the City of St. Petersburg prior to this Act becoming effective, be and the same are hereby ratified, validated and confirmed. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its becoming a law without such approval."

Neither of the above curative Acts purports in the terms thereof to validate or cure any defects in special improvement bonds and are each inapplicable by their own terms to the special improvement bonds complained of. Said Chapter 14392 purports, on its face, only to cure tax assessments up to and including the year 1928. The ad valorem tax complained of was levied in the year 1930 (R. 7 and 28),

and hence Chapter 14392 is not, and could not be, applicable even to cure the defect in the ad valorem tax levied two years thereafter, to say nothing of the fact that it does not purport to cure defects in the issuance of the special improvement bonds complained of. Chapter 15511 purports, on its face, only to cure defects in certificates of indebtedness; special improvement bonds are not even mentioned.

The special improvement bonds herein are negotiable in form and contain a definite promise and time of payment, whereas certificates of indebtedness are non-negotiable in form and contain only a guaranty of payment by the municipality, indefinite as to time.

McQuillin, Municipal Corporations, 2nd Ed., Sections 2436 and 2443;

Chapter 6864, Sections 1 and 2, Acts of the Florida Legislature of 1915 (Vol. 1, page 131);

Chapter 6772, Section 108, Special Acts of the Florida Legislature of 1913 (Vol. II, page 1012).

The question of estoppel referred to by the Florida Supreme Court is not supported by the record. It appears that an amended and supplemental bill was filed April 6th, 1931. It appears from Exhibit "E" (R. 22) that the assessment complained of was levied September 6th, 1926. The record does not disclose when the suit was begun but it does appear that it was a previously instituted and pending suit on April 6th, 1931, when the amended and supplemental bill was filed. If the law in question is unconstitutional, it is immaterial, however, when the suit was, in fact, instituted.

"Non action could not estop property owners from contesting assessment where they could have had no notice of the proposal to assess their lands until publication of notice to assess benefits."

Risty vs. Chicago R. I. & P. Ry. Co.,
270 U. S. 378.

Chapter 9914 involves an arbitrary, intentional and systematic discrimination as between the levying of an ad valorem tax for debt service on defaulted bonds and the levying of a general or ad valorem tax for other purposes.

Cumberland Coal Co. et als. vs.
Board of Revision of Tax Assessments
in Greene County, Pa.,
284 U. S. 23.

"It is clear that in a case like the present, where the issue is whether a state statute, in its application to facts which are set out in detail in the pleadings and are admitted by demurrer, violates the Federal Constitution, this court must analyze the facts as averred and draw its own inferences as to their ultimate effect, and is not bound by the conclusion of the state supreme court in this regard."

Merchants' Nat. Bank vs. Richmond,
256 U. S. 635.

SUMMARY

We respectfully submit that it appears from the pleadings and is admitted by demurrer that the paving assessment complained of was levied without the existence of and without the legislative determination of any public convenience or necessity, and that the assessment was levied against appellants' property without the existence of, and without the legislative determination of any benefits; that the amount of the assessment was based on the estimated cost which exceeded the actual cost by more than twenty-five per cent, and that bonds were issued and sold covering the estimated cost of the work which was more than twenty-five per cent greater than the actual cost, and that the ad valorem tax has been levied against appellants' property for debt service on defaulted bonds, all without notice or hearing of any kind to appellants; that the above mentioned acts were done and performed by the appellee under the express terms and provisions of Chapter 9914, Special Acts of the Legislature of Florida of 1923, and that said Chapter 9914 is unconstitutional, as not providing for due process of law and for the equal protection of the laws to appellants in the matters above mentioned, and as being a law the making and enforcement of which has abridged the privileges and immunities of appellants as citizens of the United States, all contrary to their rights under the Fourteenth Amendment to the Constitution of the United States.

CONCLUSION

Upon the whole case, we, therefore, respectfully submit that the allegations of the bill admitted by demurrer make out a case calling for the exercise by this Court of its supervisory powers, to the end that inquiry be made whether Chapter 9914, Special Acts of the Legislature of Florida of

1923, as applied and enforced by appellee in levying the special assessment issuing bonds thereon and levying ad valorem tax for debt service against appellants' property, provides for and achieved due process of law; and whether it provides for and achieved the equal protection of the laws, and whether said Chapter 9914 is a law the making of which and enforcement against the property of appellants has bridged the privileges and immunities of appellants as citizens of the United States, contrary to their rights under the First Section of the Fourteenth Amendment to the Constitution of the United States;

That to such end an appeal herein should be granted and this Court should review the decision of the Florida Supreme Court and finally reverse it, is

Most respectfully submitted,

LLOYD D. MARTIN,
Counsel for Appellants.

FILE COPY.

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

NO. 627

F. J. UTLEY AND D. T. UTLEY, APPELLANTS,

vs.

CITY OF ST. PETERSBURG, FLORIDA

Appeal from the Supreme Court of the State of Florida.

BRIEF FOR APPELLEES

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

NO. 627

F. J. UTLEY AND D. T. UTLEY, APPELLANTS,

vs.

CITY OF ST. PETERSBURG, FLORIDA, APPELLEE.

BRIEF ON BEHALF OF APPELLEE

The official report of the opinion of the Supreme Court of Florida in this case has not been published. The opinion may be found in 149 Southern Reporter at page 806.

STATEMENT OF THE CASE.

On *April 20, 1925*, the City Commission of the City of St. Petersburg, Florida, adopted a resolution providing for the grading and paving of a street and the construction of curbs, and declaring that the Commission should have the right to assess against abutting property the whole or any part of the expense of such improvements in proportion to benefits derived from such improvements. (Tr. 2.) On *May 21, 1925*, after publicly advertising for bids, which presumably indicated the street to be improved, a contract was let to the lowest bidder for such improvements. On or prior to *August 16, 1926*, the work was completed by the contractor and accepted by the City, the total cost being $40,937.46. On *August 16, 1926*, the

City formally accepted the completed work and directed that the total cost of the improvement be assessed against the abutting property upon a per front foot basis, the assessment being $18.6895 per front foot. By the same resolution it was directed that the Clerk publish notice that the Commission would sit for the purpose of hearing objections to the assessments on the 6th day of September, specifying the time and place of the meeting. These notices were published, *but neither the appellants nor their predecessors in title appeared or contested the assessment.* On the date specified in he notice, a resolution was adopted assessing the entire cost of the improvement against the abutting property and confirming and ratifying the assessments, and fixing a lien therefor on appellants' property of $934.48. The lien was recorded on the same day among the public records of Pinellas County, Florida. (Tr. 3, 4.)

Pending the construction of the improvements, the City, in the manner prescribed by Chapter 9914, Laws of Florida, 1923, authorized and issued bonds aggregating $900,000.00, covering seventy per cent of the cost of the improvement of the street in question and also the cost of improving other streets under Chapter 9914, and on January 18, 1926, authorized and issued $1,300,000.00 of bonds covering the remaining thirty per cent of the cost of the improvements in question and also the cost of other street improvements.

For all that the bill as amended shows, it appears that neither the appellants nor their predecessors in title took any step to prevent (1) the letting of the contract for improvements, (2) the issuing of the bonds, or (3) the levying of the assessments. They stood by, permitting the bonds and assessments to remain unquestioned until this suit was filed presumably shortly before April 2, 1931. A period of almost six years elapsed after the letting of the contract, and of approximately five years after the levying of the assessments, before this suit was instituted. No attempt is made by the bill as amended to explain the delay.

In 1930, special assessments not having been collected in season to pay the principal and interest of bonds issued by the City under Chapter 9914, Laws of Florida, 1923, including

the issues hereinabove mentioned, the City levied a tax of $276,280.62 upon all of the taxable property in the City of St. Petersburg, including appellants' property, for payment of interest on such bonds.

By the amended and supplemental bill of complaint it is alleged that Chapter 9914, Laws of Florida, 1923, is violative of the Constitution of the United States and the Constitution of the State of Florida, and hence that the assessments levied against the appellants' property in the year 1926 under such act and the ad valorem tax levied against appellants' property for the year 1930 for the payment in part of interest upon bonds issued under the act are void. The relief prayed is that the City be permanently enjoined from enforcing the special assessment and such ad valorem tax against appellants' property. Only minor departures from the provisions of Chapter 9914 on the part of the City in levying the assessments or imposing the ad valorem tax, or in issuing the bonds, are alleged in the bill. The only substantial complaint is that Chapter 9914, Laws of Florida, 1923, is unconstitutional and void.

The assessments were expressly validated by two other statutes of Florida, Chapter 14392, Laws of Florida, 1929, and Chapter 15511, Laws of Florida, 1931. It is contended by the bill that these acts are also violative of the Constitution of the United States and the Constitution of Florida. These contentions were denied by the Circuit Court for Pinellas County, Florida, on demurrer to the bill, and by the Supreme Court of Florida affirming the decree dismissing the bill.

THE STATUTE UNDER WHICH THE ASSESSMENT WAS MADE.

Chapter 9914, Acts of 1923, which is in effect an amendment to the statutory charter of the City of St. Petersburg, provides a system for assessing the cost of municipal improvements against benefited property, which is substantially the same as that prescribed by Chapter 9298, Acts of 1923, relating to all cities and towns in Florida. Under Chapter 9298, Acts of 1923, municipal bonds have been issued, validated and sold by Florida cities and towns in the amount of many millions of dollars. The analogous general statute (Chapter 9298) has been frequently construed and enforced by the Supreme Court of Florida in actions on municipal bonds and for the enforcement of assessments for local improvements (Klemm v. Davenport, 100 Fla. 627, 129 So. Rep. 904; Abell v. Town of Boynton, 95 Fla. 984, 117 So. Rep. 507). The statutory system prescribed by Chapter 9914, Acts of 1923, in respect to the City of St. Petersburg, differs in some details from that prescribed by the general act (Ch. 9298); and, for that reason, it may be appropriate to summarize the provisions of the statute directly under consideration.

The statute in question (Ch. 9914) provides that whenever the city shall have awarded contracts for local improvements, such as grading and paving streets, to be paid for by special assessments, it may determine the cost of the improvements and issue improvement bonds, pledging the full faith and credit of the city, to an amount not exceeding seventy per cent of the estimated cost. The bonds are to be general obligations of the city, and, if special assessments are not imposed and collected in season to pay the principal and interest, the city shall levy and collect on all the taxable property in the city a tax sufficient to pay the principal and interest as the same respectively become due and payable. (Section 1.)

Additional bonds, also constituting general obligations of the municipality, may be issued when the assessments shall have been confirmed, in excess of the bonds previously issued against the same work; but all of the bonds so issued may not

exceed the total amount of the assessment. All bonds issued under these sections are excluded from any limitation of indebtedness prescribed by the charter of the city or laws of the State. (Section 2.) Bonds issued under these sections are to mature in not more than ten substantially equal installments. (Section 3.) The statute provides that all bonds issued under its provisions shall have all the qualities of negotiable papers. (Section 5.)

Before any such bonds are issued the city officials are required to investigate and determine the legality of the proceedings. The resolution authorizing the bonds is required to contain a recital that the bonds are issued in conformity with the constitution and statutes of Florida, which recital shall import that there is constitutional and statutory authority to incur the debt and issue the bonds, and that all preceding conditions have been complied with. (Section6 .) It is expressly provided that the statute shall not be construed to require a referendum to ratify or approve the issuance of bonds under this statute. (Section 7.) The act, Chapter 9914, is declared to constitute full authority for the issuance of bonds which it authorizes without reference to any other statute, and the act in question is required to be construed as an additional and alternative method for financing such improvements. (Section 8.)

When the improvement is completed, the city officials are required to prepare an "assessment list" describing the properties to be assessed and giving the name of each owner and the amount proposed to be assessed against each lot or parcel of land. The assessment list must be entered in a book, prepared for that purpose, known as "Assessment Book for Local Improvements," which is expressly declared to be a public record. It is provided that the entries in the assessment book of any assessment "shall be and constitute notice to the public of the lien against the land so assessed and no other record or notice shall be necessary." No error or omission in regard to the name of the owner shall invalidate an assessment. The Director of Finance, who is a city official, is required to publish the assessment list "once a week for two weeks in some newspaper published in said municipality, together with a no-

tice that at the time and place mentioned in said notice, not less than fifteen days from the date of the first publication, the governing authority of said municipality will meet to hear and determine any objections or defenses that may be filed to said assessments or the amount thereof." Such notices shall state the general character of the improvements in question. (Section 9.) The assessments shall be made and apportioned as the city officials may determine—"the whole or such part as the governing authority may fix may be assessed upon properties specially benefited by the improvement, in proportion to the benefit derived therefrom; or, if the governing authority shall find that all the property abutting on such improvement is specially benefited, it may direct that the whole or such part of the costs and expenses thereof as it shall fix be assessed against the property abutting upon the improvement according to the frontage thereof." (Section 10.)

In view of the attack made upon the statute in question, because of its alleged failure to provide due process of law for the protection of the property owners, it is important to note that by Section 13 the owner of any real estate assessed for an improvement or anyone having an interest therein may appear at the time and place fixed for the hearing, which is required by Section 9, and at such hearing object to the proposed assessment again his property or the amount thereof. It will be noted that the property owner is given the right at this hearing to object not merely to the amount charged against his property, but to the proposed assessment itself. The city officials must hear and determine all objections and protests to the proposed assessments "under such reasonable rules and regulations" as they may adopt. Witnesses may be called and examined under oath. At any such hearing the city officials may alter, change and correct any assessment; but no assessment shall be increased without notice to the property owner and others interested. The city officials shall, by resolution, approve all assessments as finally fixed and adjusted at such hearings. From the date of such confirmation, such assessments shall constitute a lien superior to all others except state and county taxes. It is provided in so many words that "all

persons who fail to object to the proposed assessments in the manner herein provided shall be deemed to have consented to and approved the same." (Section 13.) A certified copy of the assessment list when finally confirmed is to be recorded with the Clerk of the Circuit Court, who is the official custodian of public land records. (Section 14.)

For the period of thirty days after the confirmation of a special assessment, "any person aggrieved shall have the right to contest the legality thereof by suit action, writ or special proceeding"; but after the expiration of that time no action shall lie to question the legality of the special assessment for any cause. (Section 15.)

All special assessments are payable in thirty days or they may be made payable by the City in ten equal annual installments with interest at eight per cent payable annually. (Section 16.) Moneys arising from payment of assessments shall constitute a fund for the payment of the bonds. (Section 17.) Delinquent assessments and installments of assessments are to bear interest at the rate of one per cent per month after maturity. (Section 18.)

If the assessment is in default for as much as thirty days, it may be enforced by bill in equity or suit at law. The decree or judgment shall include a reasonable fee for the city's attorney; "but in no event shall the municipality be liable for the payment of the attorney's fee herein provided for." The owner or all persons interested in the land shall be parties defendant in the lien enforcement proceeding. The statute prescribes the procedure. (Section 19.)

If any assessment shall be set aside by the judgment of a court, or if the city officials are satisfied that the assessment is so defective that it can not be enforced, or if such officials have omitted to make any assessment, the city is authorized to cause a new assessment to be made, following as near as may be the provisions of the act; and, if the second assessment is annulled, other assessments may be made until one is made which is valid. (Section 20.)

No omission or irregularity in the proceedings in, or pre-

liminary to, any such assessment shall affect its validity, if the assessment roll has been confirmed by the city officials. The assessment roll and its record is declared to be competent and sufficient evidence that the assessment was duly levied, and that all other proceedings were duly had and performed as required by the statute. Clerical misprisions shall not invalidate the assessment. (Section 21.)

It is expressly enacted that this act shall not repeal any other statute relating to the same subject matter, unless they are in conflict. It is further provided that the act shall not limit or amend the powers of the City contained in the statutes constituting its charter or relating to the city. Finally, the act is declared "to provide a supplemental, additional and alternative method of procedure for the benefit of said municipality, and shall be liberally construed to effectuate its purpose." (Section 25.)

THE VALIDATING ACTS

Chapter 14392, Acts of 1929, provides that all special assessments levied and imposed, and all certificates of indebtedness issued by the City of St. Petersburg prior to this Act becoming effective are ratified and confirmed; any irregularities or imperfections in any of the proceedings prior to or in levying and imposing such assessments or the issuance of such certificates of indebtedness to the contrary notwithstanding.

Chapter 15511, Acts of 1931, provides that all special assessments levied and imposed, and all certificates of indebtedness issued by the City of St. Petersburg prior to this Act becoming effective, are ratified, validated and confirmed.

Both of these statutes are special acts applicable only to the City of St. Petersburg, but they are public laws within the power of the Legislature of Florida. Both acts became effective when approved. Both statutes were passed after the levy of the assessment and the issuance of the bonds involved in this case.

ARGUMENT

While appellants enumerate some nine points upon which they predicate error by the Supreme Court of Florida (Tr. 58-61), but few of them are based upon any objection to the act under the Federal Constitution. As above noted, the act affords ample opportunity to be heard, after reasonable notice to every owner of property assessed before the assessment is finally levied. Appellants' failure to present their objections after timely notice within the time provided by the act forever precludes and estops them from questioning the regularity of the proceedings resulting in the assessment. Hence, the assertions of appellants, (1) that the assessments exceeded the cost of the improvement, (2) that the assessments were not interposed in proportion to benefits, (3) that there was no express findings on the part of the City Commission that the property was benefited to the extent of the cost of the improvements, are objections which come too late. These are mere irregularities which were waived by appellants' failure to assert them when opportunity to do so was accorded them under the terms of the act.

Chicago, Milwaukee, etc. R. Co.
v. Risty, 276 U. S. 567;

Moore v. City of Yonkers, 235 Fed.
485, 9 A. L. R. 597;

Abell v. Boynton, 95 Fla. 984,
117 So. 507.

Equally untenable is appellants' contention that this Court may review or will not follow the determination of the Supreme Court of Florida that neither Chapter 9914 or the proceedings thereunder were violative of appellants' rights under the Florida Constitution.

General American Tank Car Corp.
v. Day, 270 U. S. 367.

The remaining contentions of appellants appear to be that Chapter 9914, Laws of Florida, 1923, is in conflict with the Fourteenth Amendment to the Constitution of the United States. These contentions appear to be predicated upon appellants' assumption that under the Fourteen Amendment,

> (1) A city may not incur a valid obligation for paving and grading streets, payable out of special assessments of the property benefited, until after it affords notice and an opportunity to the owners of the abutting property, as well as all taxpayers of the City, to protest the improvement;
>
> (2) A city may not validly incur any indebtedness for grading and paving streets unless it is expressly recited in the ordinance or resolution that such improvement was a necessity or would serve the public convenience.

Neither of these propositions are sound.

THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION DOES NOT REQUIRE NOTICE TO PROPERTY OWNERS OF PROCEEDINGS TO DETERMINE WHETHER A MUNICIPAL IMPROVEMENT SHALL BE CONSTRUCTED OR NOT.

It is provided by Section 9 of Chapter 9914, Laws of Florida, 1923, that abutting property may not be assessed until after the improvement has been completed and its cost ascertained. Then and not until then is the abutting property owner affected. By the same section it is provided that the City Commission must sit at a time and place fixed by notice published for at least two consecutive weeks to hear objections of those whose property is to be assessed. By Section 13 of the act the property owner may object not only to the amount of the assessment, but to the imposition of any assessment on his property. If his objection is not complied with, he may within thirty days apply for relief to the courts. It is not pretended in this case that the notice was not given or that the Commission did not sit at the time and place specified in the notice. The record affirmatively shows to the contrary. (Tr. 23.) The appellants do not allege that they or their predecessors in title did not have actual notice of the time, place and purpose of such hearing. They do not claim that they were not informed, prior to letting of the contract, that the work had been decided upon. Their position is simply that the law is defective under the Fourteenth Amendment to the Constitution in not requiring notice and an opportunity to object to the City Commission going forward wih the project, and that this technical objection was not waived by appellants' silence and acquiescence while the improvement of their property progressed and for almost five years after its completion.

This highly technical objection is without substantial merit and has been repeatedly and expressly denied by this Court. The rule is that property owners and taxpayers are not entitled to notice of proceedings for determining whether or not to

construct the improvement. It is sufficient if they are given notice of an opportunity to be heard before their property is assessed to pay the cost of the work.

> "Due process of law does not require notice of a proceeding to determine merely whether an improvement shall be constructed without at the same time establishing the boundaries of the assessment district. It is enough if land owners who may be assessed are later afforded a hearing upon the assessment itself. Londoner v. Denver, 210 U. S. 373, 378; Goodrich v. Detroit, 184 U. S. 432, 437, et seq; Voight v. Detroit City, 184 U. S. 115, 122; Embree v. Kansas City Road District, 240 U. S. 242; Soliah v. Heskin, 222 U. S. 522."
>
> Chicago, Milwaukee, etc. R. Co.
> v. Risty, 276 U. S. 567.

In Londoner v. Denver, 210 U. S. 373, the property owner contended that the failure of the city authorities to give notice of their proceedings to determine whether or not a street should be paved operated to deprive him of his property without due process of law. The statute there involved required such notice, but the statute was not complied with in this respect.

> "The proceedings, from the beginning up to and and including the passage of the ordinance authorizing the work, did not include any assessment or necessitate any assessment, although they laid the foundation for an assessment, which might or might not subsequently be made. Clearly all this might validly be done without hearing to the landowners, provided a hearing upon the assessment itself is afforded. Voigt v. Detroit, 184 U. S. 115, 46 L. Ed. 459, 22 Sup. Ct. Rep. 337; Goodrich v. Detroit, 184 U. S. 432, 46 L. Ed. 627, 22 Sup. Ct. Rep. 397. The legislature might have authorized the making of improvements by the city council without any pe-

tition. If it chose to exact a petition as a security for wise and just action it could, so far as the Federal Constitution is concerned, accompany that condition with a provision that the council, with or without notice, should determine finally whether it had been performed."

The act meets this essential requirement that notice and an opportunity to contest the assessment be given at some stage of the proceedings before the assessment is imposed.

NO EXPRESS LEGISLATIVE DECLARATION OF THE NECESSITY OR DESIRABILITY OF THE IMPROVEMENT IS REQUIRED BY THE FEDERAL CONSTITUTION.

There is no provision of the Constitution of the United States which requires the ordinance or resolution of a municipal governing board to recite the necessity or desirability of the improvement. All that is required is that the improvement serve a public purpose. This is not to be determined from the recitals of the resolution. Whether it is a public purpose or not is a judicial question.

Milheim v. Moffat Tunnel Dist.,
262 U. S. 710.

It is elementary that, unless expressly so provided by its charter, an ordinance or resolution need not affirmatively or expressly recite the authority under which it is enacted or adopted or the necessity for its enactment. The ordinance or resolution when enacted or adopted furnishes its own reason.

2 McQuillin on Municipal Corporations, p. 150, 617.

It is not pretended by appellants that in point of fact the improvement here involved did not serve a public purpose.

THE ACTS VALIDATING THE ASSESSMENTS WERE EFFECTIVE.

The two subsequent acts of the Legislature of Florida (Chapters 14392 and 15511), validating all assessments and bonds issued under Chapter 9914, Laws of Florida, 1923, put at rest all questions here involved. Even though the assessments were imposed by the City without semblance of legislative authority, it must be conceded that it lay within the power of the legislature of Florida to authorize the improvement of the city's streets and the levying of special assessments to pay the cost of such improvement. Precisely the same contentions now advanced by appellants were made and denied in Charlotte Harbor & Northern R. Co. v. Welles, 260 U. S. 8. In that case, this Court affirmed the ruling of the Supreme Court of Florida that the Legislature of Florida could validate and ratify a special improvement tax which was void when assessed, that is, an assessment which County Commissioners were without power to make, not merely one which was defective because of irregularities in the execution of a power. The principle is laid down in that case and many others that the legislature of a state may ratify any act of a municipality which it could have authorized.

See:

City of Jacksonville v. Basnett, 20, Fla. 525;

Wade on Retroactive Laws, Sec. 252;

Boardman v. Beckwith, 17 Iowa 294;

Grimm v. Weissenberg, 57 Penn. State 436;

Middleton v. City of St. Augustine, 42 Fla. 287, 29 So. 421;

Potter v. Lainhart, 44 Fla. 647, 33 So. 251;

Anderson v. Ocala, 67 Fla. 204, 64 So. 775;

Stewart v. DeLand-Lake Helen Dist.,
71 Fla. 158, 71 So. 42;

Taylor v. Tenn. & Fla. L. & Investment Co.,
71 Fla. 651, 72 So. 206;

Lainhart v. Catts, 73 Fla. 735, 75 So. 47;

Spencer v. Merchant, 125 U. S. 345,
8 Sup. Ct. 921; 31 Law Ed. 763;

Parsons v. Dist. of Columbia, 170 U. S. 45,
18 Sup. Ct. 521, 42 Law Ed. 943;

Hagar v. Reclamation Dist., 111 U. S. 701,
4 Sup. Ct. 663, 28 Law Ed. 569;

Embree v. Kansas City, 240 U. S. 242,
36 Sup. Ct. 317, 60 Law Ed. 624;
(Opinion by Mr. Justice Van Devoenter).

Fallbrook Irrigation Dist. v. Bradley,
164 U. S. 112, 17 Sup. Ct. 56,
41 Law Ed. 369;

Wagner v. Leser, 239 U. S. 207, 36 Sup. Ct. 66,
60 Law Ed. 230;

Cranor v. Volusia County, 54 Fla. 526, 45 So. 455;

Givens v. Hillsborough County, 46, Fla. 502,
35 So. 88;

Everglades S. & L. Co. v. Board of Supervisors,
78 Fla. 276, 82 So. 815 (2 cases);

Taylor v. Hastings Drainage Dist., 78 Fla. 268,
82 So. 815;

Bannerman v. Catts, 85 So. 336, 80 Fla. 170;

Chase v. Orange County, 81 Fla. 237,
87 So. 770;

A. C. L. v. Gainesville, 83 Fla. 275,
91 So. 118;

Quill v. City of Indianapolis, 124 Ind. 292, 23 N. E. 788 (7 L. R. A. 681);

Page & Jones on Taxation by Assessment, Sec. 659;

Oregon & C. Ry. v. Portland, 25 Ore. 225, 35 Pac. 452, 22 L. R. A. 713.

By validating the special assessments, the legislature has determined that the property affected was benefited by the improvements. Whether or not the property was benefited is a legislative question which has been determind by the validating acts.

Prior v. Buehler & Coney, 170 Mo. 439, 71 S. W. 205;

Smith v. Worcester, 182 Mass. 232, 65 N. E. 40, 59 L. R. A. 728;

Duncan v. Ramish, 142 Cal. 686, 76 Pac. 661;

Chicago & A. Ry. Co. v. City of Joliet, 153 Ill. 649, 39 N. E. 1077;

Chicago & N. W. Ry. v. Emhurst, 165 Ill. 148, 46 N. E. 437;

Scott v. Pitt, 169 N. Y. 521, 62 N. E. 662, 58 L. R. A. 372;

Bronson v. Bush, 251 U. S. 182, 40 Sup Ct. 113, 64 Law Ed. 215;

Wagner v. Leser, 239 U. S. 207, 60 L. Ed. 230;

Houck v. Little River Drainage Dist., 239 U. S. 254, 60 Law Ed. 230;

Myles Salt Co. v. Iberia & St. Mary Drainage Dist., 239 U. S. 478, 68 L. Ed. 322;

Gast Realty Co. v. Schneider, 240 U. S. 55, 60 Law Ed. 523;

Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U. S. 441, 445, 446, 60 Law Ed. 372.

APPELLANTS ARE ESTOPPED BY THEIR LACHES TO CONTEST THE VALIDITY OF THE ASSESSMENT OR OF THE STATUTE UNDER WHICH LEVIED.

As pointed out in the statement of facts herein, the work was authorized in April, 1925. Notice of public letting of contract for the improvement was duly advertised and the contract was awarded in May of the same year. The work was completed prior to August 16, 1926. The appellants do not claim that they were ignorant of any of these matters at the time they occurred. They stood by and saw their property improved without questioning the authority of the City to construct the improvements. They admit and allege that under Chapter 9914, Laws of Florida, 1923, the City issued at least $2,200,000.00 of bonds to pay the cost of this and other improvements. Presumably the bonds were validated by judicial proceedings in which appellants were expressly authorized by statute to intervene and contest the right of the City to issue such bonds. It is not pretended that appellants had no notice of the issuing of the bonds or that they raised any question as to the City's right so to do. Without offering any excuse for deferring their objection for so long a period, the appellants waited until April 2, 1931, or for five long years, before questioning the right of the City to incur the expense of so improving appellants' property. While it is said that April 2, 1931, is the date upon which the supplemental and amended bill was filed and that there is nothing in the record to show when the suit was instituted, it may be confidently asserted that appellants would have caused the record to show the date of institution of the suit had such date been early enough to preclude the charge of laches.

Under these circumstances, the appellants are guilty of such laches that they are estopped to question the authority of the City to construct the improvements and to assess the cost thereof against its taxpayers and property owners.

Marion v. Pilot Mountain, 177 N. C. 118, 87 S. E. 53;

Ithaca v. Babock, 36 Misc. 49, 72 N. Y. Supp. 49.

The views expressed by the Supreme Court of Florida in Abell v. Town of Boynton, 95 Fla. 984, are peculiarly applicable to the facts of this case.

> "Under the law appellant could have complained of the assessment before the town council sitting as an equalizing board, he could have enjoined the letting of the contract for the improvement over his lands or he could have intervened and resisted the validation of the bonds, but having failed to avail himself of any of these remedies provided for his protection the general rule is that he is estopped and cannot be heard by a judicial tribunal to assert the injustice, *the invalidity or the unconstitutionality* of the assessments against him. Francomb v. City & County of Denver, 252 U. S. 7, 40 Sup. Ct. Rep. 271, 64 Law Ed. 424; Milheim v. Moffat Tunnel Improvement Dist., 262 U. S. 710, 43 Sup. Ct. Rep. 694, 67 Law Ed. 1194; First National Bank of Greenley v. Board of Com'rs. of Weld County, Colo., 264 U. S. 450, 44 Sup. Ct. Rep. 385, 68 Law Ed. 784; Gorham Mfg. Co. v. State Tax Commission of State of New York, 266 U. S. 265, 45 Sup. Ct. Rep. 80, 69 Law Ed. 279; Chicago, Milwaukee, St. Paul and Pacific R. R. Co. v. Risty, 72 Law. Ed. ..... U. S. Supreme Court Advance Opinions, April 16, 1928, page 365; Hampton v. City of Gainesville, 64 Fla. 303, 60 So. Rep. 185; Anderson v. City of Ocala, 67 Fla. 204, 64 So. Rep. 775, 52 L. R. A. (N. S.), 287; Moore v. City of Yonkers, 235 Fed. Rep. 485; 9 A. L. R. 577; City of Bartlesville v. Holm, 40 Okla. 467, 139 Pac. Rep. 273, 9 A. L. R. 627, note 634, citing cases dealing with every phase of the loss of the right to contest an assessment for public improvements by waiver, estoppel or other cause. Lemoyne v. West Chicago Park Com'rs., 116 Ill. 41, 4 N. E. Rep. 498, 6 N. E. Rep.

48; McSheroy v. Wood, 102 Cal. 647, 36 Pac. Rep. 1010; McGregor v. Hogan, 263 U. S. 234, 44 Sup. Ct. Rep. 50, 68 Law Ed. 282. 2 Page & Jones on Taxation by Assessment, Section 927. Dillon on Municipal Corporations (5th Ed.) Sections 1454, 1455 and 1457N."

CONCLUSION.

It is respectfully submitted that the objections of appellants to the acts in question are without merit, and that the judgment appealed from should be affirmed or the appeal dismissed.

WM. F. WAY,
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St. Petersburg, Florida.

F. P. FLEMING,
E. J. L'ENGLE,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

NO. 627

F. J. UTLEY AND D. T. UTLEY,
PETITIONERS (APPELLANTS),

vs.

CITY OF ST. PETERSBURG, FLORIDA

PETITION OF THE APPELLANTS FOR A REHEARING

LLOYD D. MARTIN,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

NO. 627

F. J. UTLEY AND D. T. UTLEY,
PETITIONERS (APPELLANTS),

vs.

CITY OF ST. PETERSBURG, FLORIDA

PETITION FOR REHEARING

Come now the above named petitioners, F. J. Utley and D. T. Utley, and present this their petition for a rehearing in the above entitled cause, and in support thereof respectfully show:

That your honors in opinion rendered herein April 2, 1934, in paragraph 3 used the following language: "They (meaning appellants) urge the objection also that the levy of a general tax to make up the deficiency in the fund for the payment of the bonds is invalid under the Fourteenth Amendment because the bonds were issued without notice

to the Tax Payers. But notice was unnecessary. The argument to the contrary goes counter to so many decisions that it must be condemned as unsubstantial."

We respectfully submit appellants did not contend that notice to the general taxpayers was necessary before the bonds were issued; that in using the language above quoted your honors inadvertently misunderstood and failed to consider appellants contention as general taxpayers, which was and is disclosed, we respectfully submit by the record to be as follows to-wit:

Appellants as general taxpayers were denied and forbidden by the express terms of said Chapter 9914, Section 6 (R34) from ever pursuing any remedy of any sort, at any time at all, even after the lien for general taxes had attached to their property, before any tribunal whatsoever either administrative or judicial (R8 and 9). See also paragraph at bottom of page 21 of appellants brief. It appears from Section 13 (R38) and Section 15 (R39) that the administrative and judicial remedies mentioned respectively therein, apply only to the special assessment and were not and could not be available to appellants as general Tax Payers, who ultimately were made liable for the payment of the deficiency on the bonds. It further appears that the advalorem tax was levied Aug. 11, 1930 (R7) and that thereafter appellants on April 6, 1931, filed their amended and supplemental bill (R1) to raise this additional question as general Tax Payers.

In rendering the opinion herein it escaped your honors attention, that there was no legislative finding or determination of benefit and that the identical language used in the ordering in resolution (R20) and in the assessment resolution (R22) has been judicially construed by the Supreme

Court of Florida in another case, Utley vs. City of St. Petersburg, 144 so. 53, as not amounting to a legislative finding or determination of benefits. (Appellant's brief, page 26) and contention that this was a denial of due process under the Fourteenth Amendment, and a fatal defect which appellants could not be estopped to set up.

We submit that your honors in opinion herein lost sight of or misunderstood the two foreging contentions of appellants raised by the record as above set forth, and that but for this inadvertance your honors would have reached a different result in your opinion herein, and would have held that the Federal question was genuine and adequate, and that the non Federal question of laches and estoppel was unsubstantial and inapplicable.

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that the decree of the Florida Supreme Court be upon further consideration reversed.

Respectfully submitted,

LLOYD D. MARTIN,
Counsel for Petitioners.

I, Lloyd D. Martin, Counsel for the above named Petitioners, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

LLOYD D. MARTIN,
Counsel for Petitioners.

Safety Harbor Herald, Printers

SUPREME COURT OF THE UNITED STATES.

No. 627.—October Term, 1933.

F. J. Utley and D. T. Utley, Appellants, *vs.* City of St. Petersburg, Florida, Appellee.	On Appeal from the Supreme Court of the State of Florida.

[April 2, 1934.]

Mr. Justice Cardozo delivered the opinion of the Court.

The appellants complain that assessments have been so laid upon their lands as to constitute a denial of due process of law. United States Constitution, Amendment XIV.

On April 20, 1925, the City Commission of St. Petersburg, Florida, adopted a resolution for the grading and paving of certain streets and alleys, including First Avenue north from 46th Street to Dusston, the abutting property to be assessed for the expense of the improvement "in accordance with the benefits derived therefrom."

On August 16, 1926, the city accepted the work on First Avenue, which had been completed by the contractor, and directed that the cost ($40,937.46) be spread over the abutting parcels in proportion to the frontage.

On September 6, 1926, the Commission, pursuant to notice duly published, met for the purpose of receiving complaints in respect of the assessments, and no complaints being received, the assessments were confirmed. The applicable statute provides that "all persons who fail to object to the proposed assessments in the manner herein provided, shall be deemed to have consented to and approved the same." Chap. 9914, Acts of 1923, Sec. 13.

The Commission before confirming the assessments had voted an issue of bonds, which were general obligations of the city, the proceeds to be used to make payments to contractors during the progress of the work. Chap. 9914, Acts of 1923, sec. 17. The amount of the issue was seventy per cent of the estimated cost of

the improvement of all the streets, First Avenue and others. The bonds were to be met at their maturity out of the proceeds of the special assessments, which were set apart as a separate fund. Sections 2, 17. If the fund turned out to be inadequate, the deficiency due upon the bonds was to be collected through general taxes like other city obligations. Section 2.

On August 11, 1930, the city authorities levied an *ad valorem* tax on all the taxable property in the city to make good a deficiency which had then been ascertained, the tax being at the rate of 14½ mills on each dollar of assessed valuation of property of every kind.

In 1929 and again in 1931, statutes were enacted confirming the assessments and curing any irregularities in the process of laying them. Chap. 14392, Acts of 1929; chap. 15511, Acts of 1931.

The appellants, who are property owners on First Avenue within the area of the improvement, brought this suit in or about April, 1931, to set aside the special assessment and also the lien of the general tax. A demurrer to the complaint was sustained, and the suit dismissed. The Supreme Court of Florida affirmed the decree, holding in its opinion that the applicable statutes did not infringe the immunities secured by the Fourteenth Amendment, and further that through laches and acquiescence as well as through a failure to take advantage of other statutory remedies, the appellants were "estopped" from maintaining the suit. 149 So. 806. Upon an appeal to this court the question of jurisdiction was postponed to the hearing on the merits.

1. The appellants contend that the special assessment is invalid under the Constitution of the United States for the reason that the resolution voting the improvement was adopted without an opportunity to landowners to be heard in opposition. This does not present a substantial federal question. Cf. *Spreckels & G. Co.* v. *Mingin*, 289 U. S. 103, 108; *Minneapolis, St. Paul & S. Ste. M. R. Co.* v. *C. L. Merrick Co.*, 254 U. S. 376. There is no constitutional privilege to be heard in opposition at the launching of a project which may end in an assessment. It is enough that a hearing is permitted before the imposition of the assessment as a charge upon the land (*Chicago M. & St. P. Ry. Co.* v. *Risty*, 276 U. S. 567; *Londoner* v. *Denver*, 210 U. S. 373, 378; *Goodrich* v. *Detroit*, 184 U. S. 432, 437), or in proceedings for collection

afterwards. *Hagar* v. *Reclamation District No. 108*, 111 U. S. 701; *Winona & St. Peter Land Co.* v. *Minn.*, 159 U. S. 526, 537; *Wells Fargo & Co.* v. *Nevada*, 248 U. S. 165.

This court will not listen to an objection that the charge has been laid in an arbitrary manner when an administrative remedy for the correction of defects or inequalities has been given by the statute and ignored by the objector. *Milheim* v. *Moffat Tunnel District*, 262 U. S. 710, 723; *Farncomb* v. *Denver*, 252 U. S. 7; *Porter* v. *Investors Syndicate*, 286 U. S. 461.

2. On the assumption that a hearing was unnecessary in advance of the improvement, the appellants, none the less, contend that the later hearing provided for in advance of the assessment is so restricted in its scope as to be an illusory protection. There would be difficulty in framing a remedy more comprehensive than that given by the statute if it is to be taken at its face value. The owner "may appear at the time and place fixed for the said hearing and object to the proposed assessment against the property or to the amount thereof." Section 13. "The Governing Authority of the Municipality shall hear and determine all objections and protests to the proposed assessments under such reasonable rules and regulations as it may adopt." Section 13. If the protest is overruled, the owner within thirty days thereafter may contest "the legality" of the assessment by action in the courts. Section 15. On its face, the remedy thus supplied is plenary and adequate. What the appellants really claim is this, that the remedy, though adequate on its face, is made inadequate by provisions of the Florida constitution, which are said to condemn it. We do not elaborate the argument, for the conflict, if there is any, between the statute regulating this improvement and the local constitution must be adjudged, not by us, but by the courts of the locality. The landowners have had abundant opportunity to bring the conflict to a test. They have let the hour go by. They did not appear before the Commission and either affirm or deny its jurisdiction. They stayed out of the proceeding altogether. When the assessment had been laid and they were suing to set it aside, they did not challenge the validity of the administrative remedy by the allegations of their bill. So far as the record shows, they did not even challenge it in argument when the case was heard upon appeal. If the point was made, it was not accepted. If omitted, it was waived.

The supposed defects in the scope of the administrative remedy do not present a substantial question within the federal jurisdiction.

3. The appellants do not confine themselves to a challenge of the special assessment in their assault upon the statute: they urge the objection also that the levy of a general tax to make up the deficiency in the fund for the payment of the bonds is invalid under the Fourteenth Amendment because the bonds were issued without notice to the taxpayers. But notice was unnecessary. The argument to the contrary goes counter to so many decisions that it must be condemned as unsubstantial. The distinction is fundamental between the incurring of the indebtedness and the imposition of the lien. *Roberts* v. *Richland Irrigation District*, 289 U. S. 71, *St. L. & S. W. R. Co.* v. *Nattin*, 277 U. S. 157, 159; *French* v. *Barber Asphalt Paving Co.*, 181 U. S. 324; *Webster* v. *Fargo*, 181 U. S. 394; *Chicago M. & St. P. Ry. Co.* v. *Risty*, *supra*.

4. Finally, the appellants are barred, or so the Supreme Court of Florida has held, by laches and estoppel. They stood by without opposition while the property was improved. They refrained from making use of remedies, both administrative and judicial, that were ready to their call. For nearly five years they held aloof without word or act of protest, and then invoked the aid of equity. Following *Abell* v. *Town of Boynton*, 95 Fla. 984, and other state decisions, the Supreme Court of Florida withheld an equitable remedy from suitors who had slept upon their rights. By force of that ruling, the decree of the state court rests upon a non-federal ground broad enough to support it. *Enterprise Irrigation District* v. *Farmers Mutual Canal Co.*, 243 U. S. 157, 164. Our jurisdiction therefore fails. *Irrigation District Co.* v. *Farmers Mutual Canal Co.*, *supra*; *Pierce* v. *Somerset R. Co.*, 171 U. S. 641; *Leonard* v. *Vicksburg, S. & P. R. Co.*, 198 U. S. 416; *McCoy* v. *Shaw*, 277 U. S. 302.

The federal questions are unsubstantial; the non-federal question is genuine and adequate. *St. Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282; *Abie State Bank* v. *Bryan*, 282 U. S. 765, 773.

The appeal is

Dismissed.